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AND THE
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BY
E.P. WOLSTENHOLME & R.O. TURNER

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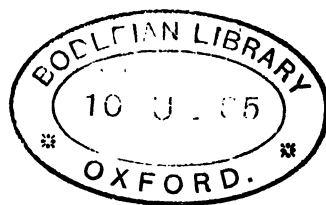
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ABBREVIATIONS.

C. A.	means	..	The Conveyancing and Law of Property Act, 1881.
C. A., 1882	The Conveyancing Act, 1882.
C. L. P. A.	..	..	..	..	The Common Law Procedure Act, 1852.
C. L. P. A., 1860	..	..	..	..	The Common Law Procedure Act, 1860.
M. W. P. A.	..	..	..	..	The Married Women's Property Act, 1882.
M. W. P. A., 1884	..	..	..	..	The Married Women's Property Act, 1884.
R. S. C., 1883	..	..	..	..	Rules of the Supreme Court, 1883.
S. L. A.	..	..	..	..	The Settled Land Act, 1882.
S. L. A., 1884	..	..	..	..	The Settled Land Act, 1884.

ADDENDA ET CORRIGENDA.

Page 23, line 12: *Re Moody and Yates' Contract* is reported 28 Ch. D. 661.

Page 82, line 11: See *Re Rackstraw's Trusts*, W. N., 1885, p. 73, for a form of vesting order, where there was no legal personal representative of the last surviving trustee.

Page 86, line 14: A deceased sole trustee is a "last surviving or continuing trustee" within C. A., s. 31; *Semble, Re Shafto's Trusts*, W. N., 1885, p. 75.

Page 91, line 8 from bottom; page 200, line 9 from bottom; page 204, last line: *Dunn v. Flood* is reported on appeal, 28 Ch. D. 586.

Page 144, line 9: *Re Paine's Trusts* is reported 28 Ch. D. 725.

Page 154, line 20: *Re Price, Stafford v. Stafford* is reported 28 Ch. D., 709.

Page 192, line 10 from bottom: *Re Dames and Wood's Contract*, affirmed W. N., 1885, p. 96.

Page 231, lines 4, 14 from bottom: *after anticipation add during any coverture.*

Page 332, line 2: *Re Wheatley* has not been followed in *Re Queade's Trusts*: W. N., 1885, p. 99.

Page 336, line 18: *after appointing add a new trustee or.*

THE VENDOR AND PURCHASER ACT;
THE CONVEYANCING AND LAW OF PROPERTY
ACT, 1881;
THE CONVEYANCING ACT, 1882;
AND
THE MARRIED WOMEN'S PROPERTY ACT, 1882.

—•—
PART I.

CHAPTER I.

SECT. I.

GENERAL EFFECT OF THE VENDOR AND PURCHASER
ACT, 1874, THE CONVEYANCING AND LAW OF PRO-
PERTY ACT, 1881, AND THE CONVEYANCING ACT,
1882.

FOR convenience of draughtsmen the following short
statement is given of the manner in which the V. &
P. A., the C. A., and the C. A., 1882, affect the form and
contents of various documents (a).

Effect of V. &
P. A., C. A. and
C. A. 1882, on
form and con-
tents of docu-
ments.

Contracts.

- (1.) Contracts for sale need not contain conditions as
regards title and evidence of title except in
special cases, as where the title is less than forty
years, or where deeds abstracted cannot be pro-
duced, &c.: C. A. s. 3. An open contract may
be safely made in case of an ordinarily good
forty years' title, but it is advisable to state the
date of commencement, see note, p. 22.

- (2.) Abstracts of title commence—

Abstracts.

- (a) As to freeholds with a document at least forty
years old: V. & P. A., s. 1.

(a) See the meaning of abbreviations stated at the end of the Table
of Cases, *supra*.

- (b) As to leaseholds with the lease or underlease: V. & P. A., s. 2, r. 1, and C. A., s. 3 (1).
- (c) As to the freehold interest in enfranchised lands with the deed of enfranchisement: C. A., s. 3 (2).
- (d) A lease or underlease is to be deemed *prima facie* good, the last receipt for rent being evidence of performance of covenants, and, in case of an underlease, of performance also of covenants in the superior lease up to the date of actual completion of the purchase: C. A., s. 3 (4), (5).

Evidence of seisin of testator may still be necessary.

But where the abstract commences with a will no alteration in the practice is made, consequently evidence of seisin may or may not be required, according to circumstances, and a clause preventing any requisition on this point may still be necessary.

Recitals.

(3.) Recitals

- (a) Of facts in documents, as to *land or hereditaments*, twenty years old are evidence: V. & P. A., s. 2, r. 2.
- (b) Of documents, as to *any property*, dated prior to the legal or stipulated time for commencement of the abstract are to be taken as correct, and production is not to be required: C. A., s. 3 (3).

Expenses.

(4.) Expenses

Of evidence required in support of abstract and not in vendor's possession are thrown on the purchaser: C. A., s. 3 (6).

What clauses to be omitted in documents.

(5.) In documents after 1881 there need be

- (a) No general words: C. A., s. 6.
- (b) No all estate clause: C. A., s. 63.
- (c) No special directions as to the mode of sale in a trust or power for sale, but only the words "Upon trust to sell" or "With power of sale," as the case may be: C. A., s. 35.
- (d) No receipt clause: C. A., ss. 22, 36.
- (e) No mortgage joint account clause: C. A., s. 61.
- (f) No power to survivors or survivor of several

executors or trustees to do any act: C. A., s. 38; nor to "assigns." New trustees duly appointed have all the powers of the original trustees, ss. 30, 31 (5), and there can now (see s. 30) be no assign by devise of a trust estate. Powers may be given simply to trustees, their executors or administrators.

- (g) No mention either of heirs, executors, administrators, or assigns, whether of covenantor or covenantee, obligor, or obligee, nor of the survivors or survivor of several covenantees or obligees, nor of the heirs, executors, or administrators of the survivor, nor of their or his assigns, need be made in covenants or bonds: C. A., ss. 58, 59, 60; except where a restrictive (a) covenant is intended to be made binding so far as the law allows on the land, and then the assigns of the covenantor should be mentioned.
- (h) No particular technical operative word is required to pass a freehold: C. A., s. 49.
- (i) No necessity for the word "heirs," "heirs of the body," &c., to create an estate of inheritance. (But on this point there is still a distinction between a deed and a will. In a deed the estate to be limited must still be described accurately as "fee simple," "in tail," &c., and cannot be created, as in a will, by informal expressions): C. A., s. 51.
- (k) No multiplication of receipt clauses for consideration. One receipt in the body of the deed or indorsed is sufficient: C. A., ss. 54, 55.
- (l) No power to executors or trustees to compound or compromise (*contra* as to administrators): C. A., s. 37.
- (m) No remedy for the recovery of rent-charges: C. A., s. 44.

What words or clauses unnecessary.

(a) Whether any other covenant can be made binding on the land, see *London and S. W. Railway Company v. Gomm*, 20 Ch. D. 562.

- (n) No powers for the receipt or application of income during minority, nor for the accumulation of surplus income: C. A., ss. 42, 43 (a).
- Covenants for title. (6.) Covenants for title are not required, but by stating the character in which a person conveys the proper covenant by him is incorporated: C. A., s. 7.
- Covenant to produce deeds. (7.) A covenant for production of deeds is no longer required. A mere acknowledgment as defined by the Act gives the proper title to production and delivery of copies, and a mere undertaking gives the proper remedy in case of destruction or damage: C. A., s. 9.
- Powers conferred on mortgagors and mortgagees. (8.) In a mortgage by *deed* there are supplied
- (a) Power for mortgagor and mortgagee when in possession to grant leases: C. A., s. 18. In some cases it may be necessary to vary this power; but it is conceived that the power ought not in any case to be entirely negatived.
 - (b) Power for mortgagee to sell and to insure against fire, and when in possession to cut and sell timber: C. A., ss. 19, 23.
 - (c) Power for mortgagee to appoint a receiver: C. A., ss. 19, 24.
 - (d) Power for mortgagee to give a receipt for sale money and other money comprised in the mortgage, and trusts for application thereof: C. A., s. 22.
- Devise of trust and mortgage estates. (9.) In a will, a devise of trust and mortgage estates is not required and should not be inserted. It is practically inoperative if inserted: C. A., s. 30.
- Appointment of new trustees. (10.) As to appointments of new trustees,
- (a) A power to appoint is only required where it is to be exercised otherwise than by the trustees or trustee for the time being: C. A., s. 31 (1).
 - (b) The original number of trustees need not be preserved, except that where there were origi-

(a) But where any trust of the accumulated rents and profits other than those stated in s. 42 (5) iii. is required, it must be mentioned.

nally two or more, one cannot be discharged unless two places at least be full: C. A., s. 31 (3).

- (c) An appointment of new trustees should contain the proper declaration as to vesting: C. A., s. 34; and where there are more than two trustees, and one simply retires and his place is not filled up, there must be a deed of consent to his discharge and to the vesting of the trust property in his co-trustees: C. A., s. 32 (see *Precedents, post*).
- (d) A separate set of trustees may at any time be appointed for each distinct trust: C. A., 1882, s. 5. Separate trustees.
- (11.) As to powers of attorney, Powers of attorney.
 - (a) A power given for valuable consideration can be made irrevocable in favour of a purchaser, lessee, or mortgagee: C. A., 1882, s. 8.
 - (b) Any power of attorney can, in favour of the same persons, be made irrevocable for any period not exceeding one year from its date: C. A., 1882, s. 9.
 - (c) The attorney may sign and seal in his own name: C. A., s. 46.
 - (d) Access to a power of attorney is enabled by means of deposit in the Central office, and office copies can be obtained: C. A., s. 48.
- (12.) In instruments after 1882 an executory limitation over of an estate in fee, or for a term, on failure of issue, becomes incapable of effect when any of the issue attain the age of twenty-one years: C. A., 1882, s. 10. This section applies only to land or hereditaments. Executory limitations.
- (13.) Powers, whether coupled with an interest or not, can be disclaimed, in like manner as an estate can be disclaimed: C. A., 1882, s. 6. Disclaimer of powers.
- (14.) Deeds may be supplemental or annexed instead of indorsed, and will be read as indorsed on the principal deed: C. A., s. 53. Supplemental deeds.

SECT. II.

GENERAL EFFECT OF THE MARRIED WOMEN'S PROPERTY ACT, 1882.

The general result of this Act as regards the form and effect of documents is as follows :—

Married woman's power of disposition.

- (1.) As to disposal of property or things in action,
 - (a) Every woman married after 1882, and
 - (b) Every woman married before 1883, as regards property and things in action acquired after 1882,

can convey as if she were a feme sole, and the concurrence of her husband in any disposition is not necessary.

Separate use.

- (2.) A trust for the separate use of a married woman appears no longer necessary. A simple restraint on anticipation, where desired, is effectual (s. 19), and sufficient, even in case of a settlement made by herself of her own property.

Acknowledgment.

- (3.) Acknowledgment of deeds is only necessary where the property was acquired and the woman was also married before 1883, in which case the mode of acknowledgment is now simplified by C. A., 1882, s. 7.

Executrix or trustee.

- (4.) A married woman can be made an executrix or trustee without any inconvenient consequences as regards mode of dealing with the property.

Power of appointment not necessary.

- (5.) It is no longer necessary to give a married woman a power of appointment in order to enable her to dispose of property either by deed or will.

Covenant to settle future property. Where wife an infant.

- (6.) In settlements it is sufficient that she alone covenants to settle her future property. The covenant of the husband has no effect, consequently where the wife is an infant at the time of marriage, no completely binding covenant can be obtained except under a settlement made by the Court, except that her covenant remains in force if she dies without having done any act to avoid it: *Burnaby v. Equitable Reversionary Interest Society*, W. N., 1885, p. 18; but on attaining twenty-one she may be put to her election to confirm the settlement or take nothing

under it: *Willoughby v. Middleton*, 2 J. & H. 344; *Smith v. Lucas*, 18 Ch. D. 531.

(7.) A covenant by a married woman will no longer be void, but a covenant by her to settle and also a settlement by her of real or personal estate will, unless a consideration is given, be voluntary and liable to all the incidents of a voluntary covenant or settlement. The principle of *Teasdale v. Braithwaite*, 4 Ch. D. 85, 5 *ib.* 630, and *Re Foster and Lister*, 6 Ch. D. 87, no longer applies.

Post-nuptial
settlement by
married
woman.

(8.) Except that a woman in settling her property has the power which a man has not, to restrain herself from anticipation during coverture, all settlements by women are now placed on the same footing as settlements by men (s. 19).

(9.) In the case of a woman married after 1882 her debts are payable out of her separate property only, s. 1 (2), and the covenant of indemnity against the wife's debts hitherto inserted in a simple deed of separation for the purpose of supporting it as a settlement for value, is now unnecessary, and ceases to be available for that purpose, but she herself can contract and so make it a settlement for value.

Separation
deeds.

(10.) It seems that a document sealed and delivered by a married woman is now her deed at common law, and not merely a writing sealed and delivered, she being for all purposes of property and contract a *feme sole*; but the Act does not expressly say so. The same principle seems to apply to a will. But see *Re Price, Stafford v. Stafford*, W. N., 1885, p. 32, and note thereon, M. W. P. A., s. 1 (1), *infra*.

Deeds
generally.

(11.) The Act seems to render obsolete as to women married after 1882 all the cases as to fraud on the husband's marital rights, and also as regards property devolving after 1882 on a married woman, all the cases as to reduction in possession, and as to what creates a separate use, and as to her equity to a settlement.

Separate use;
equity to
settlement.

(12.) Also it is conceived that under a gift after 1882 to husband and wife in terms which would make them

Joint tenancy.

joint tenants if they were not married, they will no longer take as one person or hold by entireties, but take as joint-tenants in the same manner as two unmarried persons, and take each a share where there is a third joint-tenant or tenant in common (*a*). So under a limitation to husband and wife and the heirs of their bodies they will take as tenants in common in tail (see *Fearne*, C. R. 39, 40).

Husband's
right to
personalty
of wife
intestate.

(13.) The Act contains no express provision as to whether a husband married after 1882, or a husband married before 1883 in respect to property acquired after 1882, will, in the absence of any disposition by the wife during her life or by will, become absolutely entitled in his marital right to the wife's personal estate on taking out letters of administration, or will become tenant by the curtesy. Under the old law equity only interfered just so far as was necessary to give effect to the separate use. By the death of the wife without making any disposition, the separate use was exhausted, and all the husband's rights remained as if it had never existed (see *Cooper v. Macdonald*, 7 Ch. D. 296, per Jessel, M.R.). Now (see M. W. P. A., s. 1) the wife takes as a *feme sole*, and is a separate individual, the husband takes nothing in his marital right during the coverture, and it seems difficult to say that he can have any marital right after the coverture is ended. But as regards personal estate s. 25 of the Statute of Frauds (29 Ch. ii. c. 3) is an express enactment not repealed, and may be taken as still operative to give to the husband beneficially the personal estate of his wife dying intestate, as well as the right to take out letters of administration. No such question arose on the Married Women's Property Act 1870 (33 & 34 Vict, c. 93), which does not use the words "feme sole," but only the ordinary expressions "separate use" (see ss. 1, 3, 4, 5, 7, 8, 10, 12) and "separate property" (see ss. 2-5, 9, 11, 13, 14), not interfering therefore with the husband's marital rights further than

Preserved by
Statute of
Frauds, s. 25.

Wife not feme
sole under Act
of 1870.

(a) See, however, *Re Marsh, Mander v. Harris*, 27 Ch. D. 166.

is done by the same expressions used in a settlement or will.

(14.) The estate by the curtesy was an extension during the husband's whole life (arising on birth of inheritable issue) of his freehold in right of his wife during the joint lives (Burton, Real Prop. 145-6), where the estate of the wife was an inheritance in possession (Fearn, C. R. 341-2). If the estate by the curtesy still exists, it is wholly changed in its nature. The husband has no present freehold in his wife's right, nor can he have any remainder, there being no particular estate. He must take, if at all, by *quasi* descent in the same manner as the heir. It seems difficult to say that the Act impliedly creates a new kind of descent.

Estate by curtesy.

(15.) The wife's term of years in land, and her chattels passing by delivery, acquired after 1882, no longer vest legally in the husband, nor are they capable of being assigned by him. He must now, it seems, take out letters of administration to complete his title on her death.

The wife's term and chattels.

(16.) Also marriage is no longer a severance of the wife's joint-tenancy in chattels passing by delivery (*see* Williams on Pers. P. 409, 9th ed.).

Wife's joint tenancy in chattels.

(17.) Under the Statutes of Limitation there is no longer in regard to property acquired after 1882, any saving in favour of a wife on account of the disability of coverture. She is free to sue.

Coverture now no disability.

(18.) The Act does not enable a donor to make a conveyance, or devise to husband and wife which will put them in the same position as before the Act. Every married woman coming within the terms of the Act appears now to be made a completely distinct person from her husband for all purposes connected with *her own* property. The Act does not affect her right to dower or freebench, or under the Statutes of Distribution in respect to her husband's property.

Wife divorced for purposes of her own property.

(19.) The Act affords no assistance in the disposition by a woman married before 1883 of property acquired by her before that year. She can still only dispose by acknowledged deed (under the Fines and Recoveries

Disability of women married before 1883.

20 & 21 Vict.
c. 57, not
applicable to
choses in action.

Act, 3 & 4 Will. 4, c. 74, as amended by C. A. 1882, s. 7) of land or an interest in land or money liable to be laid out in land. She can also under 20 & 21 Vict. c. 57 dispose of a reversionary interest in personal estate acquired under an instrument dated after 1857, and not derived under her marriage settlement. The latter Act only applies to a reversionary interest in personal estate, so that neither she nor her husband separately or together can assign a simple *chose in action*, for instance, a debt or a policy of assurance effected in her name, as distinguished from an equitable *chose in action*, such as a legacy or other money held in trust for her, which would come under the description of personal estate.

CHAPTER II.

THE VENDOR AND PURCHASER ACT, 1874.
37 & 38 VICT. c. 78.

An Act to amend the Law of Vendor and Purchaser, and further to simplify Title to Land. [7th August, 1874.]

WHEREAS it is expedient to facilitate the transfer of land by means of certain amendments in the law of vendor and purchaser :

SS. 1, 2.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. In the completion of any contract of sale of land made after the thirty-first day of December one thousand eight hundred and seventy-four, and subject to any stipulation to the contrary in the contract, forty years shall be substituted as the period of commencement of title which a purchaser may require in place of sixty years, the present period of such commencement; nevertheless earlier title than forty years may be required in cases similar to those in which earlier title than sixty years may now be required.

Forty years substituted for sixty years as the root of title.

By 13 and 14 Vict. c. 21, s. 4, the word "land" in Acts of Parliament passed since 1850 includes messuages, tenements and hereditaments, houses and buildings of any tenure, unless where there are words to exclude houses and buildings, or to restrict the meaning to tenements of some particular tenure.

Definition of "land" in Acts of Parliament.

2. In the completion of any such contract as aforesaid, and subject to any stipulation to the contrary in the contract, the obligations and rights of vendor and purchaser shall be regulated by the following rules; that is to say,

Rules for regulating obligations and rights of vendor and purchaser.

s. 2.

First. Under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assign shall not be entitled to call for the title to the freehold.

Rule that lessee has notice of lessor's title not altered.

The rule that a lessee has constructive notice of his lessor's title has not been altered by this section. He is now in the same position with regard to notice as if he had before this Act stipulated not to inquire into his lessor's title (*Patman v. Harland*, 17 Ch. D. 353, 358). S. 3 of C. A. 1882, as to notice makes no alteration in this respect. It does not operate in favour of a person who enters into a contract whereby he precludes himself from "making such inquiries and inspections as ought reasonably to have been made:" see subs. (1) (i).

Contract for lease under power no part of title.

By s. 4 of C. A., 1882, the contract for a lease made under a power does not form part of the title to the lease.

Second. Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions.

Effect of recital twenty years old.

In *Bolton v. London S. Board*, 7 Ch. D. 766, a recital in a deed more than twenty years old that a vendor was seised in fee simple was held sufficient evidence of that fact, precluding the purchaser from demanding a prior abstract, except so far as the recital was proved to be inaccurate. The decision seems open to question, as it in effect negatives the recognised right of a purchaser to a proper abstract of title extending over forty years, which might shew the recital to be inaccurate.

As to the effect of a recital under this s., see also *Re Marsh and Earl Granville*, 24 Ch. D. 11.

Third. The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

Purchaser's equitable right to production of documents.

As to the purchaser's equitable right to production of documents, see Sug. V. & P. c. 11, s. 5, 14th ed.; Dart, 143, 5th ed.

Fourth. Such covenants for production as the pur-

chaser can and shall require shall be furnished at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser. SS. 2, 3, 4, 5.

Fifth. Where the vendor retains any part of an estate to which any documents of title relate he shall be entitled to retain such documents.

Contracts for sale, where the vendor retains any documents, should now provide for giving an acknowledgment in writing of the right of the purchaser to the production, and delivery of copies under C. A. s. 9, and, where he is beneficial owner, also an undertaking for safe custody (see Special Conditions of Sale, *post*). The liability to give the covenant under s. 2, r. 4 of this Act, if incurred after 1881, is satisfied by an acknowledgment (C. A. s. 9 (8), (14)).

Acknowledgment substituted for covenant.

As to the costs of attested and other copies of documents retained by the vendor, see C. A. s. 3 (6), *post*.

3. Trustees who are either vendors or purchasers may sell or buy without excluding the application of the second section of this Act.

Trustees may sell, &c., notwithstanding rules.

4. *The legal personal representative of a mortgagee of a freehold estate, or of a copyhold estate to which the mortgagee shall have been admitted, may, on payment of all sums secured by the mortgage, convey or surrender the mortgaged estate, whether the mortgage be in form an assurance subject to redemption, or an assurance upon trust.*

Legal personal representative may convey legal estate of mortgaged property.

Repealed and superseded by s. 30 of the C. A. as to deaths happening after 1881. This section did not apply to a transfer of mortgage (*Re Spradbery's Mortgage*, 14 Ch. D. 514).

5. *Upon the death of a bare trustee of any corporeal or incorporeal hereditament of which such trustee was seised in fee simple, such hereditament shall vest like a chattel real in the legal personal representative from time to time of such trustee.*

Bare legal estate in fee simple to vest in executor or administrator.

Repealed as to England on and after the 1st January 1876, by the Land Transfer Act, 1875, s. 48, except as to anything duly done thereunder before that date. Re-enacted by the same section with an

SS. 5, 6, 7.

amendment confining its operation "to a bare trustee dying intestate," which section has in turn been repealed by the C. A., s. 30, in case of deaths occurring after 1881. It would seem therefore that where nothing had been done under this section before the 1st January 1876, the hereditament of a bare trustee dying testate, and vested in his personal representative solely by force of this section, became divested and devolved as if the V. & P. A. had not been passed. Thus, up to the 1st January 1882, where nothing had been done under this repealed section before the 1st January 1876, the devise by a bare trustee of his trust estate is operative.

Repealed as to Ireland by the C. A., s. 73, in case of deaths happening after 1881.

Meaning of
"bare trustee."

As to the meaning of "bare trustee," see *Christie v. Ovington*, 1 Ch. D. 279; *Morgan v. Swansea Urban Sanitary Authority*, 9 Ch. D. 582; and p. 202 (a) *post*. There is no distinction now between the case of a bare trustee and any other trustee dying after 1881.

Married
woman who is
a bare trustee
may convey,
&c.

6. When any freehold or copyhold hereditament shall be vested in a married woman as a bare trustee, she may convey or surrender the same as if she were a feme sole.

This s. applies
only to trust
estates devolv-
ing before
1883.

The aid of this section is now only required in case of trust estates devolving on a married woman before 1883. As to all trust estates, whether freehold, copyhold or leasehold, devolving on her after 1882, she is in every respect in the same position as a feme sole: *M. W. P.A.*, ss. 1, 18.

Protection and
priority by
legal estates
and tacking
not to be
allowed.

7. After the commencement of this Act, no priority or protection shall be given or allowed to any estate, right, or interest in land by reason of such estate, right, or interest being protected by or tacked to any legal or other estate or interest in such land; and full effect shall be given in every court to this provision, although the person claiming such priority or protection as aforesaid shall claim as a purchaser for valuable consideration and without notice: Provided always, that this section shall not take away from any estate, right, title, or interest any priority or protection which but for this section would have been given or allowed thereto as against any estate or interest existing before the commencement of this Act.

Repealed as to England by the Land Transfer Act, 1875, s. 129, and as to Ireland by the C. A., s. 73. In force in England between 7th August 1874 and 1st January 1876. The effect of this section was to prevent a first mortgagee from being safe in making a further advance,

his security for which became under this section postponed to all intermediate mortgages; as to which, consider *Pease v. Jackson*, 3 Ch. App. 576.

SS. 7, 8, 9.

It is conceived that this section did not, while in force, wholly abolish the protection given to a purchaser having the legal estate without notice of an equitable charge, but applied only to the case of two distinct interests, one of which could not stand alone without being protected by the other.

8. Where the will of a testator devising land in Middlesex or Yorkshire has not been registered within the period allowed by law in that behalf, an assurance of such land to a purchaser or mortgagee by the devisee or by some one deriving title under him shall, if registered before, take precedence of and prevail over any assurance from the testator's heir-at-law.

Non-registration of will in Middlesex, &c. cured in certain cases.

As to the time allowed for the registration of wills in Middlesex, see 7 Anne, c. 20, ss. 8-10; and for the registration of wills in the W. Riding of Yorkshire, 2 & 3 Anne, c. 4. ss. 20, 21, in the E. Riding, 6 Anne, c. 35, ss. 14, 15, and in the N. Riding, 8 Geo. 2, c. 6, ss. 15-17 in the case of testators dying before 1st January 1885. The time allowed for the registration in the three Ridings of Yorkshire of wills of testators dying on or after that day is governed by the Yorkshire Registries Act, 1884, ss. 11, 14.

Time for registration of wills in Middlesex and Yorkshire.

9. A vendor or purchaser of real or leasehold estate in England, or their representatives respectively, may at any time or times and from time to time apply in a summary way to a judge of the Court of Chancery in England in chambers, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the judge shall make such order upon the application as to him shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid.

Vendor or purchaser may obtain decision of judge in chambers as to requisitions or objections, or compensation, &c.

A vendor or purchaser of real or leasehold estate in Ireland, or their representatives respectively, may in like manner and for the same purpose apply to a judge of the Court of Chancery in Ireland, and the judge shall make such order upon the application as to him shall appear

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ss. 9, 10. — just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid.

Position of parties under this a. In proceedings under this section the parties are in the same position as under a reference as to title in an action for specific performance, and accordingly evidence by affidavit is admissible (*Re Burroughs, &c.*, 5 Ch. D. 601).

Extent of Act. 10. This Act shall not apply to Scotland, and may be cited as the Vendor and Purchaser Act, 1874.

CHAPTER III.

CONVEYANCING AND LAW OF PROPERTY ACT, 1881.
44 & 45 VICT. c. 41.

An Act for simplifying and improving the practice of Conveyancing ; and for vesting in Trustees, Mortgagees, and others various powers commonly conferred by provisions inserted in Settlements, Mortgages, Wills, and other Instruments ; and for amending in various particulars the Law of Property ; and for other purposes.

[22nd August, 1881.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

I.—PRELIMINARY.

SS. 1, 2.

1.—(1.) This Act may be cited as the Conveyancing and Law of Property Act, 1881.

PRELIMINARY.

(2.) This Act shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-one.

Short title ;
commence-
ment ; extent.

(3.) This Act does not extend to Scotland.

2. In this Act—

(i.) Property, unless a contrary intention appears, includes real and personal property, and any estate or interest in any property, real or personal, and any debt, and anything in action, and any other right or interest :

Interpretation
of property,
land, &c.

(ii.) Land, unless a contrary intention appears, includes land of any tenure, and tenements and hereditaments,

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S. 2. corporeal or incorporeal, and houses and other buildings,
PRELIMINARY. also an undivided share in land :

" Land." For the meaning of "land" in Acts of Parliament see 13 & 14 Vict.
c. 21, s. 4, *ante*, p. 11.

(iii.) In relation to land, income includes rents and profits, and possession includes receipt of income :

(iv.) Manor includes lordship, and reputed manor or lordship :

Reputed
manor.

Where all the freehold estates held of a lord are purchased by him or devolve on him by escheat, whereby the services become extinct, the manor ceases to exist ; also, there cannot be a manor without a court baron ; and no court baron can be without two freeholders as suitors at least. In case there be not two suitors the manor becomes a reputed manor, or manor in reputation ; and continues to have certain rights and franchises which were appendant to the manor (1 Cruise, Dig. p. 34), as the right to wrecks, estrays, &c., 1 Watk. Cop. 27 ; and the right to appoint a sexton of a parish, *Soane v. Ireland*, 10 East, 259 ; and if there be but one free tenant the seigniorship as to him remains with respect to his services, though there can be no court held : 1 Watk. Cop. 27.

(v.) Conveyance, unless a contrary intention appears, includes assignment, appointment, lease, settlement, and other assurance, and covenant to surrender, made by deed, on a sale, mortgage, demise, or settlement of any property, or on any other dealing with or for any property ; and convey, unless a contrary intention appears, has a meaning corresponding with that of conveyance :

(vi.) Mortgage includes any charge on any property for securing money or money's worth ; and mortgage money means money, or money's worth, secured by a mortgage ; and mortgagor includes any person from time to time deriving title under the original mortgagor, or entitled to redeem a mortgage, according to his estate, interest, or right, in the mortgaged property ; and mortgagee includes any person from time to time deriving title under the original mortgagee ; and mortgagee in possession is, for the purposes of this Act, a mortgagee

who, in right of the mortgage, has entered into and is in possession of the mortgaged property :

S. 2.
PRELIMINARY.

(vii.) Incumbrance includes a mortgage in fee, or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum ; and incumbrancer has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof :

(viii.) Purchaser, unless a contrary intention appears, includes a lessee or mortgagee, and an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for any property ; and purchase, unless a contrary intention appears, has a meaning corresponding with that of purchaser ; but sale means only a sale properly so called :

(ix.) Rent includes yearly or other rent, toll, duty, royalty, or other reservation, by the acre, the ton, or otherwise ; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift :

(x.) Building purposes include the erecting and the improving of, and the adding to, and the repairing of buildings ; and a building lease is a lease for building purposes or purposes connected therewith :

(xi.) A mining lease is a lease for mining purposes, that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes :

(xii.) Will includes codicil :

(xiii.) Instrument includes deed, will, inclosure award, and Act of Parliament :

(xiv.) Securities include stocks, funds, and shares :

(xv.) Bankruptcy includes liquidation by arrangement, and any other act or proceeding in law having, under any Act for the time being in force, effects or results similar to those of bankruptcy ; and bankrupt has a meaning corresponding with that of bankruptcy :

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- SS. 2, 3. (xvi.) Writing includes print; and words referring to
PRELIMINARY. any instrument, copy, extract, abstract, or other document
include any such instrument, copy, extract, abstract, or
other document being in writing or in print, or partly in
writing and partly in print:
(xvii.) Person includes a corporation:
(xviii.) Her Majesty's High Court of Justice is referred
to as the Court.

Singular in-
cludes plural,
&c.

Singular includes plural, plural singular, and the masculine includes
feminine unless the contrary is expressly provided: 13 & 14 Vict.
c. 21, s. 4.

SALES AND OTHER TRANS- ACTIONS.

II.—SALES AND OTHER TRANSACTIONS.

Contracts for Sale.

*Contracts for
Sale.*
Application of
stated condi-
tions of sale to
all purchases.

3.—(1.) Under a contract to sell and assign a term of
years derived out of a leasehold interest in land, the
intended assign shall not have the right to call for the
title to the leasehold reversion.

Title to under-
lease.

This is supplementary to s. 2, rule 1, of the Vendor and Purchaser
Act, 1874 (*ante*), and (following that Act) does not apply to a lease for
lives. It places the title to an underlease, in regard to shewing the
lessor's title, on the same footing as the title to a lease from the
freeholder (see also s. 13 of this Act, *post*), and the underlessee has in
like manner constructive notice of his underlessor's title (*Patman v.*
Harland, 17 Ch. D. 353). As to the effect of C. A., 1882, s. 3, see
note to V. & P. A. s. 2, r. 1, *ante*.

How far objec-
tions, &c., are
precluded.

This and subs. 3 preclude the purchaser from calling for or making
any requisition, objection, or inquiry as to the underlessor's title, as
between vendor and purchaser, but it does not alter the rule enabling
the purchaser to prove the lease to be defective *aliunde* (see first note
to subs. 3).

Contract for
lease under
power not
part of title.
Title to enfran-
chised copy-
holds.

By s. 4 of C. A., 1882, a contract for a lease made under a power is
excluded from forming part of the title to the lease.

(2.) Where land of copyhold or customary tenure has
been converted into freehold by enfranchisement, then,
under a contract to sell and convey the freehold, the
purchaser shall not have the right to call for the title to
make the enfranchisement.

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Under this subs. the title to the freehold of enfranchised copyholds is placed on the same footing as the title to a lease, and commences with the deed of enfranchisement. This subs. should be read in connection with subs. 3, under which a purchaser is precluded from requiring production of documents recited in the enfranchisement deed, and is bound to assume the correctness of the recitals.

The word "purchaser" in this and the subsequent subs. of this section means (notwithstanding the definition clause) a purchaser on a sale only (see subs. 8).

A copyholder obtaining enfranchisement after 1881 is not entitled in the absence of an agreement to acknowledgment of the right to production of the freehold title: see *Re Agg-Gardner*, 25 Ch. D. 600, 604. (The head-note is inaccurate.)

The following subs. 3, 6, 7, are not confined to land.

(3.) A purchaser of any property shall not require the production, or any abstract or copy, of any deed, will, or other document, dated or made before the time prescribed by law (a), or stipulated, for commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; nor shall he require any information, or make any requisition, objection, or inquiry, with respect to any such deed, will, or document, or the title prior to that time, notwithstanding that any such deed, will, or other document, or that prior title, is recited, covenanted to be produced, or noticed; and he shall assume, unless the contrary appears, that the recitals, contained in the abstracted instruments, of any deed, will, or other document, forming part of that prior title, are correct, and give all the material contents of the deed, will, or other document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgment, enrolment, or otherwise.

Notice of a document being notice of all its contents (Sug. V. & P. 775, 14th ed.), a purchaser would, but for this sub-section, be entitled on an open contract to require the production of all documents

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SALES AND
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*Contracts for
Sale.*

Meaning of
purchaser in
this s.

Production of
documents
recited or
noticed prior
to commence-
ment of title.

(a) That is for lands or hereditaments, forty years, except where an earlier title than sixty years would have been required before the V. & P. A. See s. 1 of that Act.

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Sale.

recited or noticed. But this clause will not protect the vendor where a defect in the prior title appears on the face of the abstract (*Sellick v. Trevor*, 11 M. & W. 722; Dart, 152, 5th ed.), nor affect the purchaser's right to object to the earlier title if he can shew it to be defective *aliunde* (*Darlington v. Hamilton*, Kay, 550, and cases cited at p. 558; *Waddell v. Wolfe*, L. R. 9 Q. B. 515; *Harnett v. Baker*, L. R. 20 Eq. 50; *Jones v. Clifford*, 3 Ch. D. 779; *Broad v. Munton*, 12 Ch. D. 131); or where the defect is accidentally disclosed by the vendor; *Smith v. Robinson*, 13 Ch. D. 148. This right he retains under subs. 11, and if intended to be precluded it must be expressly provided for (*Hume v. Bentley*, 5 De G. & S. 520).

Contract
should still
fix date for
commence-
ment of title.

It is still advisable to provide expressly in all contracts as to the date at which the title is to commence. The V. & P. Act leaves it open to require an earlier title than forty years in cases similar to those in which an earlier title than sixty years could previously have been required. Thus where the first abstracted deed is a conveyance under a trust for sale, or under a power, or the bar of an entail, the vendor is entitled to production, if not to an abstract, of the deed creating the trust or power or estate tail, and it may be said that the date of this deed is the time prescribed by law for commencement of the title (see *Parr v. Lovegrove*, 4 Drew. 170). A voluntary deed dated less than forty years back is not a proper commencement of the title, where no indication of the nature of the instrument is given by the contract: *Re Marsh and Earl Granville*, 24 Ch. D. 11.

(4.) Where land sold is held by lease (not including under-lease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.

(5.) Where land sold is held by under-lease the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted; and on production of the receipt for the last payment due for rent under the under-lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the under-lease have been duly performed and observed

up to the date of actual completion of the purchase, and further that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

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Contracts for
Sale.

These two subs. cover breaches after the contract and up to completion in all cases where a rent is reserved, see *Laurie v. Lees*, 14 Ch. D. 249, 7 App. Cas. 19. But they do not provide for the exceptional case of a lease at a peppercorn rent containing covenants; except where a receipt for the peppercorn rent can be actually obtained. If obtained it is equivalent in effect to a receipt for a money rent. In the case of *Re Moody and Yates' Contract*, W. N. 1885, p. 30, the time for performance of the covenant to build the house to the satisfaction of the lessor's surveyor had not expired, so that a receipt for rent was no waiver of a breach, which in fact had not occurred. In the case of a peppercorn rent it should be expressly provided that the mere fact of possession at the time of completion of the purchase is to be sufficient evidence of performance.

Lease at a
nominal rent.

(6.) On a sale of any property, the expenses of the production and inspection of all Acts of Parliament, inclosure awards, records, proceedings of courts, court rolls, deeds, wills, probates, letters of administration, and other documents, not in the vendor's possession, and the expenses of all journeys incidental to such production or inspection, and the expenses of searching for, procuring, making, verifying, and producing all certificates, declarations, evidences, and information not in the vendor's possession, and all attested, stamped, office, or other copies or abstracts of, or extracts from, any Acts of Parliament or other documents aforesaid, not in the vendor's possession, if any such production, inspection, journey, search, procuring, making, or verifying is required by a purchaser, either for verification of the abstract, or for any other purpose, shall be borne by the purchaser who requires the same; and where the vendor retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.

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- S. 3. As to the expense of producing documents and of attested copies which, but for this clause, would be borne by the vendor, see Dart, 143, 407, 5th ed. This subs. alters the rule as to the expense of journeys established by *Hughes v. Wynne*, 8 Sim. 85.
- SALES AND OTHER TRANSACTIONS.
- Contracts for Sale.
- Expenses of producing documents.
- Where documents cannot be produced.
- Evidence not within this subs.
- Subs. 6 only relates to expenses in reference to documents and abstracts of documents which the vendor has not in his possession, but of which he can procure the production. In the case of *Re Johnson and Tustin*, 28 Ch. D. 84, Pearson J. considered that this subs. enabled a vendor who had no deeds in his possession except the conveyance to himself to throw on the purchaser the whole expense of making an abstract of the prior title. It seems, however, a question whether it is not the vendor's duty in the first instance to furnish a forty years' abstract. When that is done, all evidence required to support or verify it falls on the purchaser. If, however, there are any documents of which he cannot procure the production he must protect himself against production by a special condition.
- Where the lessee covenants to complete a house to the satisfaction of the lessor's surveyor, the certificate of the surveyor as to completion is part of the title and it must be obtained at the vendor's expense: *Re Moody and Yates' Contract*, W. N. 1885, p. 30.
- (7.) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.
- (8.) This section applies only to titles and purchasers on sales properly so called, notwithstanding any interpretation in this Act.
- (9.) This section applies only if and as far as a contrary intention is not expressed in the contract of sale, and shall have effect subject to the terms of the contract and to the provisions therein contained.
- (10.) This section applies only to sales made after the commencement of this Act.
- Meaning of "sale made."
- A sale is made when there is a complete contract for sale. The purchase-money then becomes personal estate of the vendor, and the land then becomes real estate of the purchaser, see *Lysaght v. Edwards*, 2 Ch. D. 507.
- (11.) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of

this section, or any of them, specific performance of the contract would not be enforced against him by the Court.

SS. 3, 4.

SALES AND
OTHER TRANS-
ACTIONS.

Contracts for
Sale.

Effect of an
open contract
since the Act.

Under this section, taken in connection with the V. & P. A., and in particular ss. 1 and 2 of that Act, *ante*, a vendor having a title such as is usually accepted by a willing purchaser, may safely enter into an open contract for sale, without fear of being put to undue expense in answering requisitions or furnishing evidence. At the same time the purchaser will not incur more risk than in buying under suitable conditions of sale, since subs. 11 reserves to him every defence in an action for specific performance: see first note to subs. 3 of this s.

Trustees may buy or sell under contracts within this section, see s. 66, *post*, and as to contracts under the V. & P. A., s. 2, see s. 3 of that Act.

Trustees pro-
tected.

4.—(1.) Where at the death of any person there is subsisting a contract enforceable against his heir or devisee, for the sale of the fee simple or other freehold interest, descendible to his heirs general, in any land, his personal representative shall, by virtue of this Act, have power to convey the land for all the estate and interest vested in him at his death, in any manner proper for giving effect to the contract.

Completion of
contract after
death.

(2.) A conveyance made under this section shall not affect the beneficial rights of any person claiming under any testamentary disposition or as heir or next of kin of a testator or intestate.

(3.) This section applies only in cases of death after the commencement of this Act.

This section should be read in connection with s. 30, and is not rendered unnecessary by that section, as a vendor who has contracted to sell is not a trustee unless the contract is valid and binding on both parties at his death (*Lysaght v. Edwards*, 2 Ch. D. 506). If the title be not accepted in the vendor's lifetime, or be not such as he could have enforced, he is not a trustee, though after his death the purchaser should accept the title, nor would the vendor be a trustee where the contract is not signed by, and so is not enforceable against, the purchaser: *ib.* 507. But in either case it might be enforceable by the purchaser.

When vendor
not trustee.

The section applies to all cases where there is a contract "enforceable against the heir or devisee," that is at least to all cases where there is a clear written contract signed by the deceased vendor. The

Case where
action may
still be neces-
sary.

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SS. 4, 5.

SALES AND
OTHER TRANS-
ACTIONS.

Contracts for
Sale.

This s. not
required where
legal estate is
outstanding.

Does not apply
to tenant in
tail or copy-
holds.
Estates *pur
autre vie*.

purchaser may then waive all objections and insist on performance, and an action will not now be required merely to obtain the legal estate where the vendor has died, having devised the land in settlement or otherwise in such manner that no conveyance can be obtained. But if there is any doubt whether a contract binding on the vendor subsisted at his death, an action will still be necessary. This might happen in case of a parol contract and alleged part performance. Matters are in fact placed in the same position as if there was a devise of the fee to trustees.

Where the legal estate is outstanding at the time of the vendor's death, the aid of this section is not required. The person in whom it is outstanding can convey, and the personal representative can give a discharge for the purchase-money. This makes a complete title.

The section does not apply to a contract by a tenant in tail which by his death becomes incapable of being enforced. Nor does it apply to copyholds.

It applies, however, to an estate *pur autre vie* where it would devolve on the heirs general as special occupants, which is a *quasi* descent: Burton, p. 295, *D. d. Hunter v. Robinson*, 8 Barn. & Cr. 296. If the executors or administrators take as special occupants the aid of this section is not required. Leaseholds for lives devised in settlement are usually vested in trustees, in which case also a conveyance can be made independently of this section.

The section does not apply to the peculiar case of the vendor having a power of appointment which he does not exercise, the property being settled in default of appointment, a case rather difficult to provide for generally: see *Morgan v. Milman*, 3 D. M. & G. 24; Fry on Specific Perf., 2nd ed. p. 68.

Discharge of Incumbrances on Sale.

*Discharge of
Incumbrances
on Sale.*

Provision by
Court for in-
cumbrances,
and sale freed
therefrom.

5.—(1.) Where land subject to any incumbrance whether immediately payable or not, is sold by the Court or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court, in case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in Government securities, the Court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge, and in any other case of capital money charged on the land, of the amount sufficient to meet the incumbrance and any interest due thereon; but in either case there shall also

be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reason think fit to require a larger additional amount.

S. 5.
—
SALES AND
OTHER TRANS-
ACTIONS.
—
*Discharge of
Incumbrances
on Sale.*

This section is confined to cases of sales only.

(2.) Thereupon, the Court may, if it thinks fit, and either after or without any notice to the incumbrancer, as the Court thinks fit, declare the land to be freed from the incumbrance, and make any order for conveyance, or vesting order proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

See *Dickin v. Dickin*, W. N. 1882, p. 113; *Milford Haven, &c., Co. v. Mowatt*, 28 Ch. D. 402.

(3.) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(4.) This section applies to sales not completed at the commencement of this Act, and to sales thereafter made.

See definition of incumbrance, s. 2 (vii). Under s. 69, subs. (3) the application to the Court will be by summons; subs. (4), (5), and (6) provide for the notices to be given; subs. (7) provides for costs.

How applica-
tion to Court
made.

This section greatly facilitates sales of encumbered estates, especially when taken in connection with ss. 15, 16, and 25. It applies to ordinary sales, as well as sales by the Court. Suppose the estate for sale to be certain to produce, say, £100,000, but to be subject to (1) a jointure of £300 per annum, (2) £20,000 for portions for younger children under age, and therefore not yet raisable, (3) a first mortgage for £50,000 (all of which will certainly be paid out of the proceeds of sale), and (4) a second mortgage for £20,000 which may or may not be paid according to the price obtained. Before this Act the owner could not himself safely institute any proceeding for a sale; he might

Facilities given
for sale of
encumbered
estates.

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SALES AND OTHER TRANS- ACTIONS.

Discharge of Incumbrances on Sale.

Mode of pro- ceeding to obtain sale.

Costs of appli- cation.

Effect of s. 5 on rights of incumbrancers.

bring an action for redemption against the last mortgagee, but was liable to be absolutely foreclosed if the money was not paid at the day fixed, there being usually no enlargement of time in a redemption action (Dan. Ch. Pr. 861, 5th ed.). Even were a person found willing to make the required advance the owner could not be certain that the first mortgagee would consent to produce the deeds or to transfer, he might insist on reconveying. Again in an action of foreclosure a mortgagee could only obtain a sale free from the jointure if the jointress consented to release, and must necessarily sell without any release of the portions and subject to depreciatory conditions as to indemnity, or as to leaving them a charge.

Under this section and ss. 15, 16, and 25, the course will be simple. If an advance can be obtained to pay off the mortgages the mortgagee, assuming his mortgage to be subsequent to the Act, can be required to produce the deeds (s. 16). Whether his mortgage is subsequent to the Act or not, he can be required to transfer (s. 15). If a sale is desired, the owner can bring an action for sale (s. 25), in which the only necessary defendant would be the last mortgagee, he being the only incumbrancer not certain to be paid in full, and whom it is therefore necessary to bind by the judgment for sale. The sale being made, there will be set apart: (1) £10,000 and an additional 10 per cent., making £11,000 in consols to answer the jointure; (2) £22,000, including the additional 10 per cent., to answer the portions; and (3) £55,000, also including the 10 per cent., to answer the first mortgage, making a total of £88,000. The estate will thereby be cleared from all charges except the money due to the second mortgagee, and he, if not paid in full, will, as defendant, be bound by the sale. In the case of a sale out of Court, the owner can, when the contracts are signed, and on the faith of the incoming purchase-money, generally procure a temporary advance of the amount required to be paid into Court to answer the charges, and thus at once obtain a conveyance or vesting order (s. 5, subs. 2). By s. 69, subs. 7, the Court can direct by whom the costs of any application are to be paid.

By the operation of this section, the jointress and the children entitled to portions suffer no substantial injury. They have the same security which the Court considers proper in cases of annuities and legacies payable out of personalty, with a further margin of 10 per cent. The mortgagees suffer no injury. They are always bound to accept payment on six months' notice. The margin of 10 per cent. and the dividends or interest on the sum paid into Court, are ample to provide the amount due and costs. The deposit in Court and the security for costs which may be required from the plaintiff under s. 25, subs. 3, prevents the costs of a sale falling on the defendant mortgagee unless he consents. If the deposit and security are not provided, the Court can allow the action to proceed to foreclosure in the usual way.

The Court will take care that so far as possible a mortgagee whose charge is to be provided for by payment into Court has due notice (see s. 69 (6)) before the land is declared under subs. 2 to be freed from his incumbrance. If he be absent there will generally be an agent who receives his interest upon whom notice can be served. Upon receipt of notice the mortgagee will have an opportunity of shewing the amount due, and whether he has any right of consolidation in respect of a mortgage on other property. If a mortgagee cannot be found he has no valid reason to complain that some unknown equity or further advance has been disregarded. The purpose of the section is to facilitate the sale of incumbered estates, and a sale should not be prevented by the mere fact that a mortgagee cannot be found; hence the necessity for giving the Court power to act without notice to the incumbrancer. The Court will, no doubt, in every case where a mortgagee does not appear, require an affidavit as to the amount due to him, and negating any other claim than what appears on his security. Where that security cannot be produced there may in some cases be difficulty, but the receipt for interest will generally shew what is due.

Where the mortgage contains an agreement that the money shall remain for a fixed period, the Court will probably think there is special reason for requiring a larger amount beyond the margin of 10 per cent. so as to secure the mortgagee his full interest during the fixed period, or give him the proper amount of damages on payment off.

A capital sum or an annuity payable out of rents and profits or a capital sum charged on a reversionary interest are within this section (see s. 2 (vii.)). An annual sum charged on a determinable interest in land is also within this section. If a tenant for life of land charge the land with an annuity it is not the less, while subsisting, a charge on the land, because the charge determines with his estate. If he charge the land with a gross sum it is also a charge on the land, but not in the ordinary sense in which a gross sum is said to be a charge. An annual sum, whether terminable or otherwise, charged on land, and a capital sum charged on a determinable interest in land, constitute the two cases where a capital sum could not be or might not properly be applied out of the proceeds of sale in discharge of the incumbrance. In the one case the annuitant is entitled to have payment of the annual sum continued to him, in the other case, capital money should not be applied in payment of the charge to the prejudice of the remainderman. Therefore this section provides for the application of dividends only in payment. An annual sum is a charge on land, though rents and profits only, and not the corpus of the land, can be resorted to for payment. A rent-charge recoverable only by distress is clearly a charge on land within the ordinary meaning of that term.

It seems that a vendor will not be compelled to make use of this section for discharging an incumbrance—at least where it would inflict hardship on him: *Re Great Northern R. Co. and Sanderson*, 25 Ch.

S. 5.

SALES AND
OTHER TRANS-
ACTIONS.

*Discharge of
Incumbrances
on Sale.*

As to notice to
incumbrancer.

As to mort-
gages for a
time certain.

What
incumbrances
included.

Vendor not
compelled to
act on this s.

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S. 6.

**SALVE AND
OTHER TRANS-
ACTIONS.**

*Discharge of
Incumbrances
on Sale.*

* Surplus
income.

General Words.
General words
in conveyances
of land, build-
ings, or manor.

D. 788. In that case the learned judge seemed to think the s. does not apply to a rent-charge created under the provisions of an Act of Parliament, *sed qu.*

* It is conceived that any surplus income after paying the annual sum for keeping down interest on the principal sum should be paid to the vendor and not accumulated as an addition to the fund.

General Words.

6.—(1.) A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

(2.) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings conveyed, or any of them, or any part thereof.

(3.) A conveyance of a manor shall be deemed to include and shall by virtue of this Act operate to convey, with the manor, all pastures, feedings, wastes, warrens, commons, mines, minerals, quarries, furzes, trees, woods, underwoods, coppices, and the ground and soil thereof, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, view of frankpledge and all that to view of frankpledge doth belong, mills, mulctures, customs, tolls, duties, reliefs, heriots, fines, sums of money, amercia-

ments, waifs, estrays, chief-rents, quit-rents, rentscharge, rents seck, rents of assize, fee-farm rents, services, royalties, jurisdictions, franchises, liberties, privileges, easements, profits, advantages, rights, emoluments, and hereditaments whatsoever, to the manor appertaining or reputed to appertain, or at the time of conveyance demised occupied, or enjoyed with the same, or reputed or known as part, parcel, or member thereof.

(4.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(5.) This section shall not be construed as giving to any person a better title to any property, right, or thing in this section mentioned than the title which the conveyance gives to him to the land or manor expressed to be conveyed, or as conveying to him any property, right, or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

(6.) This section applies only to conveyances made after the commencement of this Act.

The object of inserting general words in a conveyance was to prevent any question as to whether a particular easement or right would, or would not pass without those words. In most cases the words might be useless; still in some case they might be required, as for instance, to pass reputed rights and easements. As a general rule in case of land and houses they merely express what is included in the description, or forms part and parcel of the land or houses, and the rights and easements appurtenant thereto, *i.e.* annexed by express or implied grant, and all these pass with the land or houses (Gale, 47; 88, 5th ed.; Williams on R. P. 328, 12th ed.). But where an easement has become extinct by unity of possession of the dominant and servient tenements, a conveyance of land or a house "with all easements therewith used and enjoyed," will operate as a grant *de novo* of the easement which, though at one time appurtenant, had been extinguished (*Barlow v. Rhodes*, 1 Cr. & M. 448; Gale, 48; 90, 5th ed.; Williams on R. P. 329, 12th ed.). Even where no easement existed before the unity of possession, but a right of way was used with one tenement over the other, a grant of the first-mentioned tenement, "together with all ways now used or enjoyed therewith," would pass the right of way (*Barkshire v. Grubb*, 18 Ch. D. 616; see also *Watts v. Kelson*, L. R. 6 Ch. Ap. 166;

S. 6.

SALES AND
OTHER TRANS-
ACTIONS.

General Words.

Use of general
words as to
land or houses.

Easements used
or enjoyed with
but not appur-
tenant to land.

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SS. 6, 7.

SALES AND
OTHER TRANS-
ACTIONS.

General Words.
General words
as to manors.

Mines and
minerals.

Kay v. Oxley, L. R. 10 Q. B. 360); but would not pass it if the grant were only "with all ways appurtenant thereto" (*Harding v. Wilson*, 2 B. & C. 96; *Bolton v. Bolton*, 11 Ch. D. 970, 972). A conveyance after 1881 will operate to pass reputed easements in like manner under this Act, without any express general words.

The general words used in a conveyance of a manor either (1) express what is included in the description as parcel of the manor (see *Shep. Touch.* 92), or (2) they are royal franchises, which if they are appurtenant to the manor pass without express words, but not otherwise (see *Morris v. Dimes*, 1 Ad. & El. 654).

Mines and minerals pass under a conveyance of land without being expressly mentioned, except in copyhold or customary assurances and except in conveyances to railway companies, from which latter they are excepted unless expressly mentioned (see 8 & 9 Vict. c. 20, s. 77). They are therefore omitted from the general words which by this section are made applicable to land and houses, but are included in the general words applicable to manors, as they may in some cases have become severed from the manor, and once severed could not be reunited to it as they might be to the surface of land. It may be a question whether an enfranchisement of copyholds by conveyance of the fee simple reserving the minerals would not operate as a severance.

Covenants for Title.

*Covenants for
Title.*
Covenants for
title to be
implied.

7.—(1.) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Act, be implied, a covenant to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say :

Covenant need
not be ex-
pressed to be
for heirs, &c.

This clause should be read in connection with s. 64, making singular include plural and plural singular in implied covenants. Sect. 59, subs. 2, and subs. 6 of this section render it unnecessary to provide expressly that the covenant shall be by the conveying party "for himself, his heirs, executors, or administrators," or that it shall be with the "heirs and assigns" of the party to whom the conveyance is made. As regards acts to be done under the covenant, when made with two or more, this section should be read with s. 60, subs. 2.

Therefore when "A. and B. as beneficial owners hereby convey," it is implied that "A. and B." (plural, s. 64) "hereby for themselves their heirs," &c. (s. 59 (1) (2)) "covenant," that is, they give a joint covenant. When "each of them A. and B. as beneficial owner hereby conveys," it is implied that "each of them hereby for himself, his heirs," &c. (s. 59 (1) (2)) "covenants," that is, each gives a several covenant. Where they convey in both modes they give joint and several covenants. Again in the covenant for further assurance the words "at the request and cost of the person," &c., where the conveyance is to several, include "persons" (s. 64) and the survivors or survivor of them, and the person on whom the right to sue on the covenant devolves (s. 60 (1) (2)).

The covenant of a conveying party is implied "as regards the subject-matter or share of subject-matter *expressed* to be conveyed by him." It is not material that he actually has anything to convey, he may be made in terms to convey simply for the purpose of giving an implied covenant. Therefore, in the case of a conveyance by tenant for life and remainderman if they both convey as beneficial owners a covenant will be implied by both as to the whole fee, joint or several or both, according to the mode in which they convey.

So also in a conveyance by tenant for life, and remainderman for life, or in tail or in fee, or by joint tenants, or tenants in common, there can be implied covenants joint or several or both, as to the entirety or part, as may be required.

The following examples may be useful by way of explanation:—

- (1.) Where all jointly convey the whole as beneficial owners there will be implied a joint covenant as to the whole;
- (2.) Where each conveys as beneficial owner only in respect of a share or an estate for his life or a remainder in fee there will be implied a several covenant by each as to the share or estate which he conveys;
- (3.) Where all convey jointly and each conveys severally as beneficial owners and owner in respect of the whole there will be implied a joint and several covenant as to the whole;
- (4.) Where each conveys severally as beneficial owner in respect of the whole there will be implied a several covenant as to the whole;
- (5.) Where trustees convey under a power, the covenant of the tenant for life is obtained either by his conveying and confirming as beneficial owner, or under subs. (2) by his directing as beneficial owner the trustees to convey;
- (6.) An appointment under a power by a person "as beneficial owner," "trustee," &c., implies a covenant, the appointment being a conveyance: see s. 2 (v);

S. 7.
SALES AND
OTHER TRANS-
ACTIONS.

Covenants for
Title.

Joint and
several cove-
nants, how
implied.

Covenant
applies to sub-
ject *expressed*
to be conveyed.

By tenant for
life and
remainderman.
By joint
tenants or
tenants in
common.

Where all
convey as bene-
ficial owners.
Each as bene-
ficial owner.

All jointly and
each sepa-
rately.

Each in respect
of whole.

Under appoint-
ment.

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- S. 7 (A).**
SALES AND OTHER TRANS-ACTIONS.
Covenants for Title.
Conveyance to uses.
Conveyance by tenant in tail.
- (7.) Under a conveyance ~~to uses~~ the implied covenant is with the grantee to ~~uses~~, ~~being~~ the person to whom the conveyance is made. ~~The~~ covenant with him enures for the benefit of the ~~persons~~ in whom the uses are executed as in the case of an actual covenant. The implied covenant is in fact an actual covenant of the ordinary kind incorporated in the conveyance;
- (8.) A tenant in tail is by s. 15 of the Fines and Recoveries Act empowered to dispose of the fee simple. He, in fact, conveys the fee under a statutory power, and the whole fee is the subject-matter of conveyance. His covenant therefore applies to the whole fee simple.
- Conveyance made by several.**
Covenants applicable to all property.
- Where property is sold by several co-owners they together form one owner, and it is conceived they ought to covenant jointly and severally as to the whole, but the practice on this point is not uniform.
- The covenants in this section are applicable to property of all kinds, including policies of assurance, reversionary interests in personal estate, choses in action, and personal chattels: see the definition of conveyance, s. 2 (v).
- On conveyance for value, by beneficial owner.**
Right to convey.
- (A.) In a conveyance for valuable consideration, other than a mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely):
- That, notwithstanding anything by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed, subject, as, if so expressed, and in the manner in which, it is expressed to be conveyed, and that, notwithstanding anything as aforesaid, that subject-matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys or any person conveying by his
- Quiet enjoyment.**

direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so conveys, or any person conveying by his direction, or by, through or under any one not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made, through whom the person who so conveys derives title, otherwise than by purchase for value; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims, and demands other than those subject to which the conveyance is expressly made, as either before or after the date of the conveyance have been or shall be made, occasioned, or suffered by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value; and further, that the person who so conveys, and any person conveying by his direction, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made, by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value, will, from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to

S. 7 (A).
SALES AND
OTHER TRANS-
ACTIONS.

*Covenants for
Title.*

Freedom from
incumbrance.

Further assur-
ance.

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S. 7 (A).
 —
 SALES AND
 OTHER TRANS-
 ACTIONS.
 —
*Covenants for
 Title.*

whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required :

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage) :

How conveying party to be described.

The meaning of clause A is that the actual words of conveyance must describe the conveying party as "beneficial owner," or "settlor," or otherwise (as intended): (see the 4th Sch. to the Act, Forms I., III., and IV.). It is not sufficient to recite that he is seised in fee, and then for him to convey simply. He must be expressed to convey as "beneficial owner," "settlor," or otherwise as the case may require. The object of requiring these special words of description to be used is to enable those who do not wish to adopt the Act to frame their conveyances, mortgages, &c., in the same form precisely as before the Act.

Word "convey" not necessary.

It is not necessary, in order that a conveyance may operate under this section, to use the word "convey" or "conveyance." These words include all the operative words "assign," &c., ordinarily used, see s. 2 (v), and may be used instead of the word "grant," see s. 49 and the schedules to this Act where "convey" is used to pass a fee simple, and s. 57 which enacts that deeds using expressions to the like effect as in the 4th schedule shall be sufficient. Accordingly it is immaterial what word is used; in a conveyance in fee "grant" may be used; in a conveyance under a power "appoint" may be used; and in the case of personal estate "assign" may be used, all these words being equally capable of attracting the covenants in this section.

"Purchase for value."

The expression "purchase for value" is not to include a conveyance in consideration of marriage for the reason that the covenant E, *post*, by a settlor is a limited covenant. Therefore a person deriving title under a marriage settlement should covenant as to the acts of the settlor in the same manner as he would covenant for the acts of his ancestor if he were conveying as heir at law.

Covenants in voluntary conveyance.

A voluntary conveyance (if it be not a settlement to which covenant E is made applicable) still requires an express covenant, if any is intended to be given, but in most cases no covenant would be given.

How far back covenant extends.

If A. takes by conveyance on a sale by B., who takes under a settlement, voluntary or otherwise, made by C., then B. derives title "otherwise than by purchase for value" through C., and in the conveyance by B. to A. the implied covenant by B. would extend to the acts of C. But A. does not derive title "otherwise than by purchase for value" through B. and consequently not through C., and on a conveyance by

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A. his implied covenant would extend only to his own acts. This appears clear if we consider that, assuming the settlement voluntary, C. could defeat it by conveyance for value before A.'s purchase but not afterwards. The implied covenant therefore extends back only to acts subsequent to the last conveyance for value not being a settlement.

S. 7 (A), (B),
(C).

SALES AND
OTHER TRANS-
ACTIONS.

*Covenants for
Title.*

(B.) In a conveyance of leasehold property for valuable consideration, other than a mortgage, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

On conveyance
of leaseholds
for value, by
beneficial
owner.

Validity of
lease.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsundered, and in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance :

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage):

The Act does not provide for the covenant of indemnity against rent and covenants by a purchaser on the assignment of leaseholds. The circumstances differ so much that a general covenant could not easily be framed. Moreover the purchaser does not always execute the deed.

On assignment
of leaseholds
express cove-
nant by pur-
chaser still
required.

(C.) In a conveyance by way of mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

On mortgage
by beneficial
owner.

That the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-

Right to con-
vey.

S. 7 (C).

SALES AND
OTHER TRANS-
ACTIONS.*Covenants for
Title.*Quiet enjoy-
ment.Freedom from
incumbrance.Further assur-
ance.

matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed; and also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and thenceforth quietly hold, occupy, and enjoy or take and have, the subject-matter expressed to be conveyed, or any part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, incumbrances, claims, and demands whatever, other than those subject whereto the conveyance is expressly made; and further, that the person who so conveys and every person conveying by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will, from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof

to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required :

S. 7. (C), (D),
(E).

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OTHER TRANS-
ACTIONS.

*Covenants for
Title.*

(D.) In a conveyance by way of mortgage of leasehold property, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely) :

On mortgage
of leaseholds
by beneficial
owner.

That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid, and effectual lease or grant of the land conveyed and is in full force, unforfeited, and unsurrendered and in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance ; and also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains on the security of the conveyance, pay, observe, and perform, or cause to be paid, observed, and performed all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions, and agreements, or any of them :

Validity of
lease.

Payment of
rent and per-
formance of
covenants.

(E.) In a conveyance by way of settlement, the follow-

On settlement

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S. 7 (E), (F). ing covenant by a person who conveys and is expressed to convey as settlor (namely):

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OTHER TRANS-
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*Covenants for
Title.*

For further
assurance,
limited.

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death, will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the persons to whom the conveyance is made and those deriving title under them, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by them or any of them shall be reasonably required:

Covenants in
settlements,
old practice
as to.

The old practice in settlements was for the settlor to give the ordinary vendors covenants for title. This can still be done by making him convey as beneficial owner instead of a settlor, and so incorporating covenant A. The old practice is inconvenient. If a charge be suppressed or accidentally overlooked, the trustees on discovering it become bound to sue the settlor. The amount to be recovered might be such as to leave him penniless and make proceedings in bankruptcy necessary. This cannot be for the benefit of the wife or family, and is an obligation which should not be imposed on trustees. There should be either no covenant for title, or at most this limited covenant E, which binds the settlor to bar an estate tail (see *Davis v. Tollemache*, 2 Jur. N. S. 1181, 1185), or execute a valid appointment under a power, or do any other like act for confirming the settlement, but does not throw on him any obligation to discharge incumbrances.

On conveyance
by trustee or
mortgagee.

(F.) In any conveyance, the following covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the Court, which covenant shall be deemed to extend to every such person's own acts only (namely):

Against in-
cumbrances.

That the person so conveying has not executed or done, or knowingly suffered, or been party or privy

to, any deed or thing, whereby or by means whereof the subject-matter of the conveyance, or any part thereof, is or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

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Title.

On a change of trustees the covenant against incumbrances of an outgoing trustee is now of little importance, any wrongful incumbrance is a breach of trust for which there is a remedy independently of the covenant. Before the Act 32 & 33 Vict. c. 46, the covenant was useful as making the breach of trust a speciality debt having a certain priority.

Covenant by
outgoing
trustee not
material.

(2.) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, within this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.

On conveyance
by direction of
beneficial
owner.

Under subs. 1 the covenant implied on the part of any person conveying relates to what he himself conveys. Under this subs. the covenant implied on the part of the person directing applies to what another conveys by his direction. The same result would be attained by making him convey by way of confirmation as beneficial owner.

This subs. is intended to apply to a case like that of a sale by trustees under a power by the direction of the tenant for life, which, however, will not, since the Settled Land Act, 1882, be the usual case, as the tenant for life will generally now be himself the vendor. The old practice was to make the tenant for life covenant generally as if he were a vendor seised in fee. Latterly the practice has been to confine his covenant to his life estate only (see Dart, V. & P. 548, 5th ed.; 2 Dav. Conv. 261 (o), 4th ed.). If desired a proviso so limiting the covenant can be added (see subs. 7, and General Form No. 1, *post*).

Old practice as
to covenants
by tenant for
life.

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Implied cove-
 nants in con-
 veyance by
 husband and
 wife.

(3.) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, within this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband as beneficial owner; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.

The object of this subs. is to enable covenants on the part of the husband to be incorporated where husband and wife convey (see *Preced. IV., post*).

The wife may convey with consent of the husband, the husband not conveying (see *Preced. III., post*). Then the covenant is by the wife only, to the effect that notwithstanding anything done by her, &c., or any one through whom she derives title otherwise than, &c. But the general practice is for the wife to convey, and the husband also to convey and to confirm. In that case the wife and the husband should each be expressed to convey as beneficial owner, then within this subs. she will be deemed to convey by the direction of her husband as beneficial owner, and the three following covenants will be implied: (1) by the wife as beneficial owner binding her present separate property which she is not restrained from anticipating, if the conveyance is made before 1883 (see *Tullett v. Armstrong*, 4 Beav. 323 per M. R.; *Pike v. Fitzgibbon*, 17 Ch. D. 454), and binding her present and future separate property, which she is not restrained from anticipating, if the conveyance is made after 1882 (see *M. W. P. A.*, s. 1 (3) (4), s. 19); (2) by the husband as beneficial owner; and (3) by the husband in the same terms as the covenant implied on the part of the wife, that is in effect, that notwithstanding anything done by her or by any one through whom she derives title otherwise than, &c.

A married
 woman con-
 veying under
 a power.

Where a married woman conveys under a power she and her husband may in like manner each be expressed to convey as beneficial owner, then the three covenants above mentioned will be implied. The second of those covenants (being the first of the husband's covenants) will not be of importance, but his second covenant corresponds with the usual one entered into by him in similar cases independently of this Act.

As to wife's
 property
 acquired after
 1882.

Where the wife, married before 1883, conveys as beneficial owner property acquired by her after 1882, the concurrence of her husband is no longer necessary, as he takes no interest, and she disposes of it as a

feme sole : M. W. P. A., s. 5 ; nor, for the same reason, is it necessary as to any property of a woman married after 1882, *ib.* s. 2.

(4.) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the Court, or by direction of a person as beneficial owner no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.

This subs. renders it clear that a conveyance can be drawn in the old form. Where it is desired not to use the statutory covenants the character in which the conveying party conveys should not be stated, and covenants can be inserted in express words.

(5.) In this section a conveyance includes a deed conferring the right to admittance to copyhold or customary land, but does not include a demise by way of lease at a rent, or any customary assurance, other than a deed, conferring the right to admittance to copyhold or customary land.

By s. 2 (v.) "conveyance" includes a covenant to surrender. The statutory covenants contained in this section may therefore be incorporated in the deed of covenant, but they cannot be incorporated in the surrender. They may also be incorporated in all cases where customary or copyhold lands can be dealt with as freeholds, for instance, where they pass by bargain and sale under a power in a will, or by deed and admittance by virtue of the Settled Land Act, 1882, or otherwise, or where an equity is conveyed.

(6.) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

This subs. makes all covenants implied under this section run with the land so as to be enforceable by every person interested under the conveyance. It precludes any difficulty as to what covenants do or do not run with the land, as to which see note to s. 58, *post*. An

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Covenant to
surrender may
incorporate
covenant.

Benefit of
implied cove-
nants in this
section to run
with the land.

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SS. 7, 8, 9. implied covenant under this section will therefore be more valuable than the ordinary covenant.

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See further as to covenants, ss. 58-60 and 64, *post*.

*Covenants for
Title.*

(7.) A covenant implied as aforesaid may be varied or extended by deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied.

Variation of
statutory
covenants may
be made.

This subs. enables provisions to be inserted modifying the statutory covenant in any agreed manner. As so modified it will be equivalent in effect for the purpose of running with the land and otherwise, to the simple statutory covenant. The proviso limiting the covenants for title by a tenant for life (see p. 216) is an example of a variation under subs. 7, and is a valid proviso and not repugnant to the covenant (see *Williams v. Hathaway*, 6 Ch. D. 544).

(8.) This section applies only to conveyances made after the commencement of this Act.

*Execution of
Purchase Deed.*
Rights of pur-
chaser as to
execution.

Execution of Purchase Deed.

8.—(1.) On a sale, the purchaser shall not be entitled to require that the conveyance to him be executed in his presence, or in that of his solicitor as such; but shall be entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor.

(2.) This section applies only to sales made after the commencement of this Act.

This section precludes the questions raised in *Viney v. Chaplin*, 4 Drew. 237, 2 D. & J. 468; *Essex v. Daniel*, L. R. 10 C. P. 538; and *Ex parte Swinbanks*, 11 Ch. D. 525. See notes to s. 56, *infra*.

*Production and
Safe Custody of
Title Deeds.*

Production and Safe Custody of Title Deeds.

Acknowledg-
ment of right
to production,
and undertak-

9.—(1.) Where a person retains possession of documents, and gives to another an acknowledgment in writing of the right of that other to production of those documents, and to delivery of copies thereof (in this

section called an acknowledgment), that acknowledgment shall have effect as in this section provided.

(2.) An acknowledgment shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section by an acknowledgment, unless prevented from so doing by fire or other inevitable accident.

(3.) The obligations imposed under this section by an acknowledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest, or right through or under that person, or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgment relates.

(4.) The obligations imposed under this section by an acknowledgment are—

- (i.) An obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production or by any one by him authorized in writing; and
- (ii.) An obligation to produce the documents or any of them at any trial, hearing, or examination in any court, or in the execution of any commission, or elsewhere in the United Kingdom, on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and

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(iii.) An obligation to deliver to the person entitled to request the same true copies or extracts, attested or unattested, of or from the documents or any of them.

(5.) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgment shall be paid by the person requesting performance.

(6.) An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

Legal right to production assimilated to the equitable right.

Effect of s. 9.

"Retain."

No liability to damages where acknowledgment only given.

This section removes certain difficulties as to covenants for production running with the land, and makes the legal right to production co-extensive with the equitable right (as to which, see *Fain v. Ayers*, 2 Sim. & St. 533, Dart, ch. ix., s. 2, 5th ed.). Also it removes the personal liability of the original covenantor after he has parted with the documents, and transfers that obligation to each subsequent possessor, but for the period only of his possession. This personal liability has sometimes compelled a covenantor to retain documents after he had ceased to be interested in any land affected by them, or else to incur the expense of obtaining, and of procuring the covenantee to accept, a substituted covenant, and consequently to sell subject to special conditions. A person retaining documents is now enabled to give (1) an acknowledgment of the right to production, and (2), an undertaking for safe custody, together or separately. The first, unlike a covenant to the same effect, may safely be given by a trustee or mortgagee. He can always produce the documents while he has possession of them, and he ceases to be liable after he has parted with them. He should only give the acknowledgment and not the undertaking (see n. to subs. 14). An ordinary vendor will be liable to give both in the absence of special contract.

"Retain" is used in this section in its primary signification of "to keep": see Todd's Johnson, see also Webster. As to the right of the vendor to retain documents, see V. & P. A., s. 2, r. 5.

Subs. 6 expressly excludes all liability to damages for loss or destruction where an acknowledgment only is given. The liability for damages arises only upon an undertaking under subs. 9.

(7.) Any person claiming to be entitled to the benefit of an acknowledgment may apply to the Court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or

extracts from those documents or any of them to him, or some person on his behalf; and the Court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms, and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

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(8.) An acknowledgment shall by virtue of this Act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

Where by general law, and in the absence of special contract, a person would be bound to give a covenant for production and delivery of copies, subs. 8 enables him to give an acknowledgment in place of the covenant, but does not compel him to do so. He still has the option of giving a covenant, an option not likely to be exercised, as the covenant creates a more onerous liability. This s. applies only to liabilities respecting documents incurred after 1881: see subs. 14.

Acknowledg-
ment substit-
uted where
liability to
give covenant
to produce.

Where a conveyance is made to uses the acknowledgment should, like the old covenant for production, be made to the grantee to uses. The persons interested under the limitations will then, as "claiming any estate, &c., through" that grantee (see subs. 3) be entitled to the benefit of the acknowledgment.

Where convey-
ance made to
uses.

(9.) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncanceled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

This subs., as compared with the ordinary covenant for production, operates as a relief to the person bound to produce. It makes him liable for damages only while the documents are in his possession. On the other hand, it imposes an additional liability on any person afterwards acquiring possession of the documents, making him liable in damages for loss or destruction, a liability not necessarily devolving on him under the ordinary covenant merely by reason of his receiving

Liability under
undertaking is
on possessor
only.

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Damages for
loss of deeds.

the documents from a person who had covenanted for safe custody. As to the question of damages, see *Hornby v. Matcham*, 16 Sim. 325, and *Brown v. Sewell*, 11 Hare, 49. In *James v. Rumsey* (11 Ch. D. 398) the mortgagor was held entitled to an indemnity, but not to compensation.

(10.) Any person claiming to be entitled to the benefit of such an undertaking may apply to the Court to assess damages for any loss, destruction of, or injury to the documents or any of them, and the Court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

Application
under acknow-
ledgement or
for damages,
how made.

An application to the Court under this subs. or under subs. 7 should be by summons: see s. 69 (3).

(11.) An undertaking for safe custody of documents shall by virtue of this Act satisfy any liability to give a covenant for safe custody of documents.

See note to subs. 8.

(12.) The rights conferred by an acknowledgment or an undertaking under this section shall be in addition to all such other rights relative to the production, or inspection, or the obtaining of copies of documents as are not, by virtue of this Act, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.

(13.) This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.

(14.) This section applies only to an acknowledgment or undertaking given, or a liability respecting documents incurred, after the commencement of this Act.

Whether trus-
tees should
give under-
taking.

The covenant for production of documents intended to be superseded by this section imposed two obligations, (1) an obligation to produce, (2) an obligation to keep safe. The first could be enforced by specific performance, but the remedy on the second was damages only. The

old practice was that a trustee selling did not give any covenant. Latterly it has been customary for him to give a covenant limited so as to bind himself personally while having possession of the documents, and so as to bind the same, so far as may be, in the hands of other persons, "but so as not to create any further liability," or "so as not to create any liability for damages." With this limitation inserted it is conceived that the part of the covenant as to safe keeping should have been omitted, the limitation of liability being repugnant and void (*Williams v. Hathaway*, 6 Ch. D. 544); but this does not seem always to have been attended to in the precedent books. However this may be, the general rule is that a trustee does not covenant except for his own acts, and ought not to be asked to guarantee the safety of documents which might be lost without his personal neglect, as for instance, by his solicitor on a journey, when properly removing them. In this view trustees ought only to give an acknowledgment under this section and not an undertaking. If they give an undertaking any damages incurred could not, it is apprehended, in the absence of special provision, be recouped to them out of the part of the trust estate retained. But on purchase of an estate with deeds bound by an undertaking, the liability would be one attached by law to the estate, and in a proper case the trustees would be entitled to be recouped any loss. The same principle applies to mortgagees.

The old practice was to take the covenant for production of documents by a separate deed, and not to include it in the conveyance. On subsequent dealings it was kept off the abstract, and no opportunity was given for making requisitions as to the documents mentioned in the covenant. Having regard to the Act, 22 & 23 Vict. c. 35, s. 24, it is conceived that a solicitor cannot now safely omit giving an abstract of a document of even date with the conveyance commencing a title.

Under the C. A., s. 3 (3), when a conveyance becomes a root of title any requisition as to prior documents is precluded, and there is therefore no special reason for giving an undertaking by a separate writing unless the schedule of documents would make the conveyance inconveniently long, but if so given it can be destroyed when production has ceased to be of importance.

A separate writing, under hand only, should bear a sixpenny agreement stamp. Though not a document clearly included in the Stamp Acts, it would probably be held to be in effect an agreement.

An acknowledgment and undertaking being substituted for a covenant the expense will be borne by the person who would pay for the covenant, but, besides the stamp, the expense will in any case be no more than the mere cost of making out a schedule of documents.

The liability of a person giving an acknowledgment or undertaking ceases when the documents are delivered over, and attaches to the person receiving them. Therefore no indemnity need be taken on delivery over, but it is conceived that they must be properly delivered

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Acknowledg-
ment or under-
taking may be
included in the
conveyance.

Stamp on an
acknowledg-
ment or under-
taking.

Expense by
whom to be
borne.

No indemnity
required on
delivery over.

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Production and Safe Custody of Title Deeds.

Section only
applies to per-
sons actually
having pos-
session of
documents.

over, that is to say, to a person having an interest in the property to which they relate.

The acknowledgment or undertaking must be given by a person who retains the documents, *i.e.*, who actually has possession of them. Therefore where, as sometimes happens on a sale of property in mortgage, the mortgagor and mortgagee are required to place themselves under an obligation for production, the obligation by the mortgagee being limited to the period during which he has possession, he alone can give an acknowledgment. The mortgagor does not retain the deeds, and his obligation is, not to produce, but to procure production, and must be provided for by covenant in the old form. It is wrong to make the mortgagor in such a case give an undertaking for safe custody. His undertaking has no operation under this Act. It operates, as an unqualified ordinary contract for safe custody, and renders him liable for loss or destruction of the deeds after he has ceased to have any interest in them, and the person to whom it is given has not the benefit of subs. (10) of this s.

Production by
Mortgagee.

Under s. 16, *infra*, a mortgagee, under a mortgage made after 1881, is bound to produce the deeds in his custody or power to any person entitled to redeem, and to permit him to take copies or abstracts.

LEASES.

Rent and bene-
fit of lessee's
covenants to
run with
reversion.

III.—LEASES.

10.—(1.) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced, and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole, or any part, as the case may require, of the land leased.

(2.) This section applies only to leases made after the commencement of this Act.

Beneficial
owner as well
as legal rever-
sioner entitled
to sue.

This section gives to the "person entitled to the income," that is, the beneficial owner, as well as the legal reversioner, the right to sue. It also gives a mortgagee the right to sue on the lessee's covenants in a lease made under s. 18 of this Act by the mortgagor, see note to that s.

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As to some of the difficulties provided against by this section, see *Greenaway v. Hart*, 14 Com. B. 340; *Yellowly v. Gower*, 11 Exch. 274.

SS. 10, 11.

As to the cases in which the benefit of covenants by lessees ran with the reversion prior to this Act, see *Spencer's Case*, and notes, 1 Smith, L. C. 80 *et seq.* 8th ed.

LEASES.

11.—(1.) The obligation of a covenant entered into by a lessor with reference to the subject-matter of a lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

Obligation of lessor's covenants to run with reversion.

(2.) This section applies only to leases made after the commencement of this Act.

This section makes legally binding on the successors in title of a person who grants a lease under a power, all covenants which, as against the remainderman, the grantor has power to enter into.

Lessor's covenants in leases under powers.

As to the cases in which the obligation of covenants by lessors ran with the reversion before this Act, see *Spencer's Case*, and notes *ubi sup.* As to the obligation of covenants running with the land, generally, see note to s. 58, *post.*

This section necessarily does not apply to cases where the covenants are not severable in their nature, or are not attributable to particular parts of the demised property.

The two preceding sections effect a considerable extension of the principle of the Act 32 Hen. 8, c. 34, whereby the benefit of a covenant was annexed to the reversion. In order to be within that Act, the covenant must have been entered into with the owner of the legal reversion, so that in a lease under a power reserved to the mortgagor by the mortgage deed a covenant by the lessee with the mortgagor did not run, but was a covenant in gross, the mortgagor not being the legal reversioner. But the Act 8 & 9 Vict. c. 106, s. 5, enabled the lessee to covenant with the mortgagee though not a party to the lease, so that a covenant properly framed, that is with the mortgagor "and other the person entitled to the reversion" would after that act run with the

Principle of 32 Hen. 8, c. 34, extended to leases binding the legal reversioner.

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SS. 11, 12.

LEASES.

legal reversion. Now under s. 10 of this Act wherever there is a legal reversion, that is, where a lease is made by means of an ordinary power or a statutory power, as under s. 18 of this Act, or under the Settled Land Act, 1882, enabling a legal term to be carved out of the reversion, the lessee's covenants, whether so expressed or not, are annexed to and run with the reversion, and are no longer covenants in gross.

So under s. 11 the covenants of a lessor who has power to bind the reversionary estate, will run with and bind the reversioner, though the lessor be tenant for life only, or, as mortgagor, be entitled only to an equitable interest.

Where a mortgagor, not having power to bind the mortgagee, grants a lease, no legal term is created, and there being consequently no reversion, ss. 11 and 12 do not apply. If, however, the mortgagee reconvey to the mortgagor, the lease becomes good by estoppel; and if both convey to a purchaser, the result is the same: *Cuthbertson v. Irving*, 6 H. & N. 135.

Apportionment
of conditions on
severance, &c.

12.—(1.) Notwithstanding the severance by conveyance, surrender, or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition, contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

(2.) This section applies only to leases made after the commencement of this Act.

Application of
this section.

The 22 & 23 Vict. c. 35, s. 3, provides for the apportionment of conditions of re-entry where the reversion upon a lease is severed, and the rent or other reservation is legally apportioned. This section of the present Act provides for the apportionment of every condition in a lease, which is in its nature apportionable, and includes the case of the avoidance or cesser in any manner of the term granted by the lease as to part only of the land comprised therein.

13.—(1.) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

SS. 13, 14.

LEASES.

On sub-demise title to leasehold reversion not to be required.

(2.) This section applies only if and as far as a contrary intention is not expressed in the contract, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(3.) This section applies only to contracts made after the commencement of this Act.

This section is supplementary to s. 3 (1), and to the V. & P. A., s. 2 (1).

What title to be shewn by leaseholder selling or leasing.

The effect of this section, together with s. 2 (1) of the V. & P. A., on a contract to grant a lease, is as follows :

By the V. & P. A., under a contract to grant a lease for a *term of years*, the intending lessee—

- (1) Cannot, whether the intending lessor be freeholder or leaseholder, call for the title to the freehold,
- (2) But can, if the intending lessor be a leaseholder, call for the lease and the subsequent title thereto.

By the above s. 13 the intending lessee

- (3) Cannot, where the intending lessor holds by under-lease, call for the title of the superior leasehold reversion on such under-lease:

In contradistinction to a freeholder, the leaseholder is still left under liability to shew his own lease and the subsequent title thereto. This is in accordance with the usual practice. The freeholder almost invariably bars himself from shewing his own title on granting a lease, but a leaseholder does not generally do so. There are obvious reasons why a difference should be made.

Forfeiture.

Forfeiture.

14.—(1.) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails within

Restrictions on and relief against forfeiture of leases.

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<p>S. 14.</p> <p>LEASES</p> <p><i>Forfeiture.</i></p>	<p>a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.</p>
<p>Contents of notice.</p>	<p>As to service of notice, see s. 67.</p> <p>It seems not necessary that the notice should give a minute specification of the items of breach. It should merely point out generally what is the breach. Thus, in case of a covenant to "repair, maintain," &c., it would be sufficient to state that the lessee has "not repaired, maintained," &c., following the words of the covenant.</p>
<p>Amount and recovery of compensation.</p>	<p>The compensation claimed is measured by the breach, only where the breach cannot be remedied. The compensation will in most cases be merely the amount of expenses incurred. No separate remedy is given for recovering the compensation claimed, so that though the breach is remedied the action of ejectment must proceed in order to compel payment, and care should be taken not to receive rent in the meantime.</p>
<p>Informal notice.</p>	<p>In <i>North London Land Company v. Jacques</i>, 32 W. R. 283, W. N., 1883, p. 187, the lessor's notice was informal in not requiring the lessee to remedy the breach, and though judgment had been actually recovered in an undefended action against the equitable mortgagees of the lessee they were held entitled to relief.</p>
	<p>(2.) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the Court for relief; and the Court may grant or refuse relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court, in the circumstances of each case, thinks fit.</p>
<p>Relief only before re-entry.</p>	<p>The tenant can only obtain relief under this s. before the landlord has re-entered: <i>Quilter v. Mapleson</i>, 9 Q. B. D. 675, 676. Relief was refused in <i>Ebbets v. Booth</i>, Sol. J. 1883, p. 618. It was granted upon terms in <i>North London Land Co. v. Jacques</i>, 32 W. R. 283, W. N., 1883, p. 187, and in <i>Bond v. Frere</i>, W. N., 1884, p. 47.</p>
<p>What relief against forfei-</p>	<p>Before this Act no relief could have been obtained against forfeiture for breach of covenant in a lease, containing the usual proviso for</p>

re-entry on breach of covenant, except in the case of a covenant for payment of rent or insuring against fire (*Hill v. Barclay*, 18 Ves. 56; *Bracebridge v. Buckley*, 2 Price, 200; *Nokes v. Gibbon*, 3 Drew. 681); or except in cases of accident or surprise (*Hill v. Barclay*, 18 Ves. 62); or under special circumstances enabling a Court of Equity to grant relief (*Bamford v. Creasby*, 3 Giff. 675; *Bargent v. Thomson*, 4 Giff. 473; *Hughes v. Metrop. R. Co.*, 2 App. Cas. 439). Under 22 & 23 Vict. c. 35, ss. 4-9, Courts of Equity had power to grant relief in certain cases of forfeiture for omission to insure against fire. That power was extended to Courts of Common Law by the Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), s. 2. These enactments are repealed by this Act (see subs. (7) of this section); but by subs. (8) the relief against forfeiture for non-payment of rent, which extends to an underlessee (*Doe v. Byron*, 1 Com. B. 623), is left untouched. As to this relief at common law, see the C. L. P. Act, 1852, 15 & 16 Vict. c. 76, s. 212, and the C. L. P. Act, 1860, 23 & 24 Vict. c. 126, s. 1.

S. 14.

LEASES.

Forfeiture.

ture existed
before this
Act.

Subs. 2 will impose on the judges the difficult duty of deciding the terms on which relief is to be granted. It would have been well if the Act could have given some guide for estimating the penalty to be imposed on the lessee. Where there has been a breach of a covenant to insure, but no loss, it is difficult to say what is a proper sum to be paid to the landlord. Before the Act the landlord would have recovered the whole value of the lease, so that the penalty may be said to range from a farthing to that full value. The probability is that where no loss has been incurred no damages will be awarded, and the only penalty will be costs: see *Quilter v. Mapleson*, 9 Q. B. D. 678.

How damages
are to be as-
certained.

(3.) For the purposes of this section a lease includes an original or derivative under-lease, also a grant at a fee-farm rent, or securing a rent by condition; and a lessee includes an original or derivative under-lessee, and the heirs, executors, administrators, and assigns of a lessee, also a grantee under such a grant as aforesaid, his heirs and assigns; and a lessor includes an original or derivative under-lessor, and the heirs, executors, administrators, and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns.

(4.) This section applies, although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

(5.) For the purposes of this section a lease limited to continue as long only as the lessee abstains from

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LEASES.

Forfeiture.

committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(6.) This section does not extend—

(i.) To a covenant or condition against the assigning, under-letting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy (a) of the lessee, or on the taking in execution of the lessee's interest; or

(ii.) In case of a mining lease (b), to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

(7.) The enactments described in Part I. of the Second Schedule to this Act are hereby repealed.

Protection of purchaser of leaseholds against forfeiture for non-insurance.

The repeal by this subs. of s. 8 of 22 & 23 Vict. c. 35, does away with the special relief given in respect of insurance to a purchaser of a leasehold, and places him in the same position as his vendor in respect to relief generally against forfeiture. The Court would scarcely enforce a forfeiture against a purchaser without notice, or award damages or enforce a penalty against him, and he thus appears practically in as good a position in respect to insurance as under the repealed Act. The case of *Ex parte Gorely*, 4 De G. J. & S. 477, rendered s. 7 of the same Act no longer necessary.

(8.) This section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent (c).

(9.) This section applies to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

(a) As to the meaning of "bankruptcy," see s. 2 (xv.)

(b) As to the meaning of "mining lease," see s. 2 (xi.)

Forfeiture, &c., for non-payment of rent.

(c) As to forfeiture and relief against forfeiture for non-payment of rent, see Woodfall L. & T. 291-298, 11th ed.

IV.—MORTGAGES.

S. 14.

MORTGAGES.

The following is a summary of the powers conferred on mortgagors and mortgagees by this Act and made incident to their estates, unless a contrary intention is expressed, except as to the first two powers, (i.) and (ii.), which apply notwithstanding any stipulation to the contrary.

A mortgagor

(i.) May require the mortgagee, not being or not having been in possession, to transfer instead of reconveying, and to assign the debt: C. A. s. 15;

(ii.) May inspect and take copies of title deeds: s. 16;

(iii.) May redeem one mortgage without redeeming any other: s. 17;

(iv.) May have an order for sale in a redemption action: s. 25;

(v.) May when in possession make or agree to make agricultural or occupation leases not exceeding twenty-one years, and building leases not exceeding ninety-nine years: s. 18 (1) (17). Mortgagor in possession.

(i.) and (iv.) are retrospective, (ii.) is not; (iii.) applies where the mortgages, or one of them, are or is made after 1881; (v.) is not retrospective, except by agreement.

A mortgagee under a deed made after 1881

Powers of mortgagee.

(vi.) May when the mortgage money has become due sell or concur in selling: ss. 19 (i.), 20, 21;

(vii.) May insure: ss. 19 (ii.), 23;

(viii.) May appoint and remove a receiver: ss. 19 (iii.), 24;

(ix.) May give receipts for purchase and other moneys and securities: s. 22;

(x.) May after his power of sale has become exercisable recover the title-deeds, except against persons having prior claims: s. 21 (7);

(xi.) May when in possession exercise the like powers of leasing or agreeing to lease as a mortgagor in possession: see (v.) *supra*; s. 18 (2), (17); Mortgagee in possession.

(xii.) And cut and sell timber: s. 19 (iv.);

(xiii.) A mortgagee may, whether the mortgage is before or after 1881, obtain an order for sale in an action for foreclosure or redemption: s. 25 (2).

A subsequent mortgagee, as a person entitled to redeem (see s. 2 (vi.)).

(xiv.) May also exercise powers (i.) to (iv.).

(xiii.) is retrospective, (vi.) to (x.), and (xii.) are not; (xi.) is not retrospective except by agreement.

(xv.) On the death of a sole mortgagee dying after 1881 the estate devolves on his personal representatives, notwithstanding any devise in his will: s. 30. Devolution of mortgage estates on death.

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MORTGAGES.

Obligation on mortgagee to transfer instead of re-conveying.

15.—(1.) Where a mortgagor is entitled to redeem, he shall, by virtue of this Act, have power to require the mortgagee, instead of re-conveying, and on the terms on which he would be bound to re-convey, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall, by virtue of this Act, be bound to assign and convey accordingly.

When transfer of an equitable charge necessary.

This section includes an equitable as well as a legal mortgage. Though a second mortgage, or any other equitable charge, is discharged by mere payment by the owner of the equity of redemption, and no re-conveyance is necessary, yet it is not so discharged if paid by another person, and if so paid, a transfer can be required under this section of an equitable charge as well as of a legal mortgage.

Redemption by tenant for life.

A tenant for life who has obtained an order to redeem on terms which prevent interest and further costs running up against the remainderman, will be held to those terms, and cannot under this s. require transfer to a third person: *Alderson v. Elgey*, 26 Ch. D. 567.

In *Teevan v. Smith*, 20 Ch. D. 724 (as to which see *Marson v. Cox*, 14 Ch. D. 140), the actual decision was that the mortgagor could not require a transfer to his nominee as against the second mortgagee who desired to redeem the first. But the Court seemed to think that this section did not in any case enable a mortgagor to require a first mortgagee to transfer where there were intermediate mortgagees, even though they did not ask to redeem. This construction would have rendered the section to a great extent nugatory. The main difficulty arises where there are successive mortgages and the first mortgagee insists on foreclosing or selling unless paid, but refuses to transfer and will only reconvey to the second mortgagee. No advance can then be obtained to pay off the first mortgage, except on terms of paying all. This is now provided for by s. 12 of C. A., 1882, which enacts that

Amendment of this s. by C. A., 1882.

C. A., 1882, s. 12.
Reconveyance on mortgage.

The right of the mortgagor, under section fifteen of the Conveyancing Act of 1881, to require a mortgagee, instead of re-conveying, to assign the mortgage debt and convey the mortgaged property to a third person, shall belong to and be capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer.

(2.) This section does not apply in the case of a mortgagee being or having been in possession.

SS. 15, 16.

MORTGAGEE.

The reason for excepting a mortgagee in possession (see Coote, *Mortg.* 655, 741, 4th ed.), is, that once having taken possession he remains liable for all that he might but for his wilful default have received, and also liable in respect of working minerals and other matters, and remains liable after transfer for the acts and defaults of the transferee. Though the request of the mortgagor to transfer might operate as a release by him, the liability to mesne incumbrancers would still continue. A second or subsequent mortgagee might go into possession and be ousted by a prior mortgagee. Therefore it is necessary to exclude a mortgagee who has been in possession.

C. A., s. 15, continued.

Why mortgagee in possession excepted.

(3.) This section applies to mortgages made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

In applying this and the two following sections it must be remembered that mortgagor includes any person deriving title under the original mortgagor or entitled to redeem : s. 2 (vi.); *Teevan v. Smith*, 20 Ch. D. 724, 730.

Mortgagor includes second mortgagee.

The decisions cancelled by this section are *Dunstan v. Patterson*, 2 Ph. 345, and others referred to in Fisher, *Mortg.* 1005 (l), (m), 2nd ed.; and Coote, *Mortg.* 735 (m), 4th ed.

Decisions cancelled.

The mode of enforcing the right given by this section will be (1) by an action to redeem, in which the mortgagee will be directed to transfer instead of reconveying, and on refusal there will be the same remedy as on refusal to reconvey; (2) in case of a sale, by payment of the amount of the incumbrance into Court under s. 5, when on refusal to transfer a vesting order can be made under that section.

How rights under this s. enforced.

The section is retrospective, to which there can be no objection. A mortgagee is not injured by having to transfer on receiving his money. Refusal can only be for the purpose of extorting something more, but for this purpose a mortgagee would scarcely incur the liability of going into possession, so as to protect himself under subs. 2 from transferring.

Retrospective effect.

16.—(1.) A mortgagor, as long as his right to redeem subsists, shall, by virtue of this Act, be entitled from time to time, at reasonable times, on his request, and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of or extracts from the documents of title

Power for mortgagor to inspect title deeds.

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SS. 16, 17. relating to the mortgaged property in the custody or
MORTGAGES. power of the mortgagee.

(2.) This section applies only to mortgages made after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Cases affected. See observations, *ante*, on s. 5, and first n. to s. 15 (3).
As to the decisions rendered by this section inapplicable to mortgages made after 1881, see Fisher, *Mortg.* 340, 2nd ed., and Coote, *Mortg.* 729, 4th ed.

Refusal to produce deeds may impose great hardship on a mortgagor by preventing him from obtaining an advance to pay off the mortgage, and leaving him powerless to prevent foreclosure.

Restriction on consolidation of mortgages. **17.—(1.)** A mortgagor seeking to redeem any one mortgage, shall, by virtue of this Act, be entitled to do so, without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deeds or one of them.

(3.) This section applies only where the mortgages or one of them are or is made after the commencement of this Act.

Cases affected. As to the decisions affected by this section, see Fisher, *Mortg.* 678 *et seq.* 2nd ed.; Coote, *Mortg.* ch. 67, 4th ed.

Equity of redemption altered. The words "seeking to redeem" are general, and apply to the case of a mortgagor or subsequent incumbrancer giving notice to pay off as well as to the case of a redemption suit, or of a payment under an order in a foreclosure suit. Thus in the absence of agreement to the contrary, an equity of redemption arises in the mortgagor free from the right to consolidate. He is put in the same position as if he were another mortgagor, consequently the surplus proceeds of a sale (s. 21 (3)) under one security cannot be applied to make good the deficiency of another security.

How consolidation may still arise. Under this section consolidation of mortgages can only arise by express contract. It does not in terms repeal any previously existing rule of law, but it confers on the mortgagor a right in opposition to a previously existing rule, and at the same time permits him to waive that right by contract. The result, it is conceived, is to substitute consolidation by contract of the parties in place of consolidation by

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rules of equity, so that where a contract is not effectual the right to consolidate does not arise. The contract in effect gives, in certain cases, a further charge on other property, and is effectual only where the further charge would be effectual. Thus if A. purchase the equity of redemption of two estates, each from a different vendor, each estate being mortgaged to the same mortgagee, neither vendor was ever in a position to give a further charge on the other estate to his mortgagee, and there can be no consolidation of the two mortgages.

The whole costs of an action to foreclose two estates separately mortgaged to the same mortgagee by the same mortgagor to secure separate sums, must be paid on the redemption of either estate, but not twice over : *Clapham v. Andrews*, 27 Ch. D. 679.

The effect of subs. 3 is to reserve to a mortgage made before the commencement of the Act its old right in equity to become consolidated with another mortgage, whatever may be the date of the latter.

In ordinary cases the mortgagee will be content to rely on the one security taken by him as being sufficient, and will not reserve the right to consolidate. In special cases, at loans to builders, where it is intended to make numerous advances, the right to consolidate will be reserved. Where the contract is for a single loan on specific property, there can be no more obligation on the solicitor of the vendor to obtain a further charge on other property contingent merely on its becoming vested in his client as mortgagee, than to take a charge on all other present and future property of the mortgagor.

SS. 17, 18.

MORTGAGES.

In what cases there will be no consolidation.

Costs of foreclosure of two separate mortgages.

Effects of subs. 3.

Leases.

18.—(1.) A mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Act, power to make from time to time any such lease of the mortgaged land, or any part thereof, as is in this section described and authorized.

(2.) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have, by virtue of this Act, power to make from time to time any such lease as aforesaid.

The prior incumbrancers mentioned in this subs. are those becoming such after the commencement of the Act, but by agreement incumbrancers who became such previously may be included (see subs. 16).

(3.) The leases which this section authorizes are—

(i.) An agricultural or occupation lease for any term not exceeding twenty-one years ; and

Leases.

Leasing powers of mortgagor and of mortgagee in possession.

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S. 18.
MORTGAGES.
Leases.

(15.) Nothing in this Act shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this Act had not been passed.

(16.) This section applies only in case of a mortgage made after the commencement of this Act; but the provisions thereof, or any of them, may, by agreement in writing made after the commencement of this Act, between mortgagor and mortgagee, be applied to a mortgage made before the commencement of this Act, so, nevertheless, that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

This subs. enables the provisions of this section to be applied in case of mortgages made before 1881.

Mortgage after
the Act under
agreement.

Under an agreement made before this Act for giving a mortgage containing a power of sale and all usual clauses, the mortgagee is not entitled to have the operation of this s. excluded: *Re Nugent and Riley's Contract*, W. N. 1883, p. 147; 49 L. T. 132.

(17.) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

Subs. 17, extending the provisions of this section to agreements whether in writing or not for leasing or letting, must be read in connection with the Statute of Frauds (29 Car. 2, c. 3), ss. 1, 2, and with 8 & 9 Vict. c. 106, s. 3, by the combined operation of which enactments a lease for three years or less may be in writing or parol, but a lease for more than three years must be by deed: see Woodfall, L. & T. 79, 116, 11th ed.

Parol agree-
ment.

The effect of the words "so far as circumstances admit," is that subs. 7 and 8 as to covenant, condition of re-entry, and counterpart do not apply to a parol agreement, and subs. 7 as to covenant does not apply to an agreement in writing, except that there ought to be the nearest approach to a covenant, namely an agreement to pay rent.

This section removes serious difficulties in granting leases of mortgaged property (see Woodfall, L. & T. 48 *et seq.*, 11th ed.).

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Power is given to the person in possession, whether owner or incumbrancer, to grant, or contract to grant (subs. 12), leases of the kind specified in subs. 3, conformable to the other provisions of this section. These leases will be binding on all other persons interested, and will confer a valid legal term, leaving a legal reversion in the mortgagee. The rent and the benefit of the lessee's covenants (see s. 10, *ante*) will become annexed to the actual legal reversion, and thus the owner and incumbrancers will be in the same position as if they had all joined in granting the lease (see *Greenaway v. Hart*, 14 C. B. 340). The actual legal reversioner will have the same remedies as to recovery of rent, suing on covenants, and re-entry for condition broken, and be in the same position as if he had granted the term, and will be entitled to the counterpart under subs. 8 or 11 as the case may be. The lessee will also, to the extent of covenants or clauses authorized by the mortgage deed to be inserted in the lease (see subs. 14), have the same rights against the actual reversioner and persons claiming under him as if he had made or joined in making the lease (see s. 11, *ante*); but this section taken alone only authorizes the simple lease, and does not authorize any covenant or provision imposing liability on a mortgagor or mortgagee not a party to the lease.

If the mortgagor's power to lease given by this section is excluded, then under a lease made by the mortgagor after the mortgage the mortgagee has no reversion, the covenants by the lessee are covenants in gross, and cannot be sued upon by the mortgagee if he forecloses or takes possession, nor by a purchaser from him if he sells, unless the mortgagor joins in conveying: see *Cuthbertson v. Irving*, 6. H & N. 135; *Morton v. Woods*, L. R. 3 Q. B. 658, 4 *ib.* 293. The only remedy of the mortgagee when he takes possession is to eject the lessee. This in most cases is not desired, and is an inadequate remedy, especially in the case of house property, where an essential part of the value of the reversion consists in an available remedy against the tenant on the covenants to paint, repair, deliver up in repair, &c. In the case of agricultural land also, the covenants may be of importance if only to give the right to an injunction. Also if the operation of the Act be excluded, acceptance of rent by the mortgagee, or by a purchaser from him will constitute the lessee simply tenant from year to year at Common Law, without reference to the terms of the lease, unless a special agreement be previously made (*Woodfall*, L. & T. 49, 11th ed.), and in the case of agricultural land, will bring into operation the Agricultural Holdings Act, which renders necessary a year's notice expiring with a year of tenancy.

There is no objection to the allowance of a peppercorn rent for five years on a building lease as depriving the mortgagee of rent for that time. By contract under subs. 13 any less term may be fixed if desired. Some risk of loss of rent must always be incurred in mortgages of building land. The mortgagor may lease to a builder who can

S. 18.

MORTGAGES.

Leases.

Effect of leases under this section.

Right of reversioner.

Effect of excluding operation of s. 18.

As to nominal rent on building lease.

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SS. 18, 19.

MORTGAGES.

Sale; Insurance; Receiver; Timber.

destroy the land for all purposes except building and fail to complete any buildings fit to let. If the lease or agreement be made under this section, then, but not otherwise, the lessee can be sued and all the usual stringent terms of a building agreement can be enforced. If any restriction is to be placed on the power of the mortgagor to lease under this section, it should at most extend to prevent him from granting leases without the consent in writing of the mortgagee. To exclude altogether a power in the mortgagor to lease is certainly not for the benefit of a mortgagee, whose security is materially improved by having a tenant whom he can sue; at the same time the tenant is secured in the enjoyment of his lease. The mortgagor must generally, to make his property available, grant leases of some kind, and it is not advisable to compel him to lease as equitable owner only. The power to lease should be varied as required to suit each case, and not entirely negatived.

Sale; Insurance; Receiver; Timber.

Sale should be expressed to be under this Act.

Sale; Insurance; Receiver; Timber.

A conveyance by a mortgagee selling under the following power should, as is customary in the case of powers given by deed, expressly refer to the power. This, however, is only necessary for the purpose of obtaining the benefit of s. 21 (2), which (following Lord Cranworth's Act, s. 13) only exempts a purchaser from the consequences of an irregularity when the sale is in professed exercise of the power of sale conferred by this Act.

Several mortgages for separate sums.

Where several mortgagees claim under one mortgage, though in distinct sums, it is conceived that all must join in the exercise of the powers conferred on a mortgagee by this Act: see s. 2 (vi.), where "mortgage money" means money, i.e., the whole money secured by the mortgage, and "mortgagee" (which includes the plural) must necessarily have a corresponding meaning; but in mortgages of that kind, and in all other special cases, express provision should be made as to who is to exercise the powers (see, for this purpose, subss. 2 and 3 of s. 19).

Powers incident to estate or interest of mortgagee.

19.—(1.) A mortgagee, where the mortgage is made by deed, shall, by virtue of this Act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further (namely):

- (i) A power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges, or not, and either together or in lots, by public auction or by private contract, subject to such conditions

respecting title, or evidence of title, or other matter, as he (the mortgagee) thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby; and

S. 19.
MORTGAGES.
Sale; Insurance; Receiver; Timber.

As to the exercise of the power of sale conferred by this s., the conveyance and the application of the sale money, see ss. 20, 21, and as to the power of a mortgagee to give receipts for the sale or other money or securities comprised in the mortgage, see s. 22.

As to the duty of mortgagees where the mortgaged estate is sold with other property, see the analogous case of the sale of trust property, note to s. 35, *post*.

Mortgaged estate sold with other property.

- (ii.) A power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and

Under this subs. the mortgagee will be justified in insuring, unless the mortgagor shews by delivering receipt for premium, or otherwise, that a proper insurance is maintained.

When mortgagee may insure.

As to the amount and application of the insurance money see s. 23.

- (iii.) A power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or of any part thereof; and

As to the appointment, powers, &c., of a receiver see s. 24.

- (iv.) A power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any

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SS. 19, 20.

MORTGAGES.

Sale; Insurance; Receiver; Timber.

Proceeds of timber.

time not exceeding twelve months from the making of the contract.

The proceeds of the sale of timber will be rents and profits, and applied accordingly.

(2.) The provisions of this Act relating to the foregoing powers, comprised either in this section, or in any subsequent section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects, and consequences, as if such variations or extensions were contained in this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and shall have effect subject to the terms of the mortgage deed and to the provisions therein contained.

(4.) This section applies only where the mortgage deed is executed after the commencement of this Act.

Powers more extensive than in Lord Cranworth's Act.

This section replaces Part II. of Lord Cranworth's Act, 23 & 24 Vict. c. 145, which is repealed (see second schedule to this Act, Part III.), and gives the more complete and extensive powers now usually inserted in mortgage deeds. Lord Cranworth's Act only applied to hereditaments. This section applies to "property" generally, which word includes all real and personal estate, choses in action, and every right or interest which is capable of being mortgaged: see s. 2 (1).

The mortgage deed may extend or restrict the powers given by this Act, and the extended or restricted powers have effect under subs. 2, as if conferred by this Act.

Regulation of exercise of power of sale.

20.—A mortgagee shall not exercise the power of sale conferred by this Act unless and until—

(i.) Notice requiring payment of the mortgage money has been served on the mortgagor or one of several mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or

Notice.

How and to whom to be given.

As to giving notice, see s. 67.

Where a first mortgage contained a power of sale with a proviso that the power should not be exercised without giving notice to the mortgagor or his assigns, the mortgagee having received notice of a second

mortgage was held liable in damages to the second mortgagee for not giving him notice before selling (*Hoole v. Smith*, 17 Ch. D. 434), and notice to the mortgagor alone was held insufficient, but it was not decided whether notice to the second mortgagee alone would have been sufficient. It is conceived that the mortgagor is not entitled to burden his mortgagee with more than one notice, at least where it is to be given to the mortgagor or his assigns. As "mortgagor" includes "any person entitled to redeem according to his estate, interest, or right in the mortgaged property," the expression "one of several mortgagors" means, it is conceived, "one of the several persons entitled, &c., according to his estate," &c., and that it is sufficient if notice of sale be given to the first subsequent incumbrancer who has given notice of his security to the mortgagee who sells.

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MORTGAGEE.

Sale; Insurance; Receiver; Timber.

Where an immediate power of sale is desired without notice and without the other restrictions in this section, the proper course will be to agree that the mortgagee shall have the power of sale conferred by this Act, but without the restrictions on the exercise thereof imposed by this section.

Mode of excluding this section.

"Month" in this Act means calendar month: 13 and 14 Vict. c. 21, s. 4. Where the months are broken the computation of a calendar month commences from a given day in one month to the day with the corresponding number in the ensuing month: *Freeman v. Read*, 11 W. R. 802.

Month means calendar month.

- (ii.) Some interest under the mortgage is in arrear and unpaid for two months after becoming due; or
- (iii.) There has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

Under this subs. the power of sale arises on breach of a provision which the mortgagor ought to observe, as for instance, in a mortgage of a life interest and policy of assurance, on a breach of the covenant as to keeping the policy on foot.

21.—(1.) A mortgagee exercising the power of sale conferred by this Act shall have power, by deed, to convey the property sold, for such estate and interest therein as is the subject of the mortgage, freed from all estates, interests, and rights to which the mortgage has

Conveyance, receipt, &c., on sale.

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MORTGAGES.

*Sale; Insurance;
Receiver;
Timber.*

priority, but subject to all estates, interests, and rights which have priority to the mortgage; except that, in the case of copyhold or customary land, the legal right to admittance shall not pass by a deed under this section, unless the deed is sufficient otherwise by law, or is sufficient by custom, in that behalf.

Mode of exercising power of sale.

Under this section the mortgagee will proceed exactly as under the ordinary power of sale in a deed. He will convey the freeholds and also any customary freeholds passing by deed and admittance, and also his equity in copyholds by deed. As to copyholds passing by surrender and admittance, if he has a surrender, or if the mortgage was made by a tenant for life, or a person having the powers of a tenant for life, under the Settled Land Act, 1882, s. 20, he will be admitted and surrender to the purchaser. If he has no surrender, and the mortgage was not made under that Act, the legal estate must be obtained by vesting order or otherwise as before the Act.

Mere surrender gives no power to sell copyholds.

The power of sale given by s. 19 only arises where the mortgage is *by deed*. Consequently a mere surrender of copyholds by way of mortgage confers no power to sell, and it may be a question whether a deed containing a mere covenant to surrender would confer the power. In order to give the power the deed should contain an express charge (which is included in the expression "mortgage," see s. 2 (vi.)), and also a declaration that the mortgagor holds the copyholds in trust for the mortgagee, so as to enable a vesting order to be obtained if required.

Declaration of trust by mortgagor as to copyholds,

A similar declaration of trust of a term in leaseholds should be contained in a mortgage by demise.

And as to leaseholds.

Power to convey under Lord Cranworth's Act.

Under the 15th section of Lord Cranworth's Act (23 & 24 Vict. c. 145) it has been held that a mortgagee by sub-demise of leaseholds could assign the whole of the original term (*Hiatt v. Hillman*, 19 W. R. 694). It would seem to follow that he could defeat a second sub-demise or an assignment by way of second mortgage, and that a person having by deed a mere charge could convey the legal estate. A power of this kind may now be obtained by means of an irrevocable power of attorney under C. A. 1882, s. 8, which remains in force notwithstanding the death of the principal, but ceases on the death of the attorney.

(2.) Where a conveyance is made in professed exercise of the power of sale conferred by this Act, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorized, or improper, or irregular

exercise of the power shall have his remedy in damages against the person exercising the power.

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This subs. will not protect a purchaser buying with actual knowledge that the requisite notice was not given: *Parkinson v. Hanbury*, 1 Dr. & Sm. 143.

Sale; Insurance; Receivership; Timber.

(3.) The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into Court under this Act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses, properly incurred by him, as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest, and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

Under this subs. the mortgagee is authorised not merely to discharge prior incumbrances, but to pay in the sum required under s. 5 to be paid into Court to answer them. He can then sell free from incumbrances. The last words of this subs. include a subsequent incumbrancer (s. 22), to whom therefore a mortgagee may pay any surplus.

As to paying prior charges.

The mortgagee must, however, take care that he pays the residue to the right person: see *West London Commercial Bank v. Reliance Building Society*, W. N. 1884, p. 164. This is a liability which, as trustee of the residue he cannot avoid, but in a doubtful case he can pay the money into Court: see *Roberts v. Ball*, 24 L. J. (Ch.) 471; Morg. Ch. Orders, 65 (b), 5th ed.

Surplus to subsequent incumbrancer.
As to payment of surplus.

(4.) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(5.) The power of sale conferred by this Act shall not affect the right of foreclosure.

(6.) The mortgagee, his executors, administrators, or assigns, shall not be answerable for any involuntary loss happening in or about the exercise or execution of the

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SS. 21, 22. — MORTGAGES. — <i>Sale; Insurance; Receiver; Timber.</i>	power of sale conferred by this Act or of any trust connected therewith. (7.) At any time after the power of sale conferred by this Act has become exercisable, the person entitled to exercise the same may demand and recover from any person, other than a person having in the mortgaged property an estate, interest, or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.
Payment of prior incumbrances. Production of deeds.	A mortgagee exercising his power of sale can, under s. 5, pay into Court the amount required to answer prior incumbrances. On a sale by a second or subsequent mortgagee, being a person entitled to redeem (see definition of mortgagor, s. 2 (vi.)), he can, as against a prior mortgagee, under deed subsequent to 1881, obtain production of the title deeds so as to shew the title; and having made the proper payments under s. 5 to answer all prior incumbrances, he is entitled under this subs. to recover the title deeds from the first mortgagee, who would then be a bare trustee of the legal estate.
Recovering deeds.	
Mortgagee's receipts, discharges, &c.	22.—(1.) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.
Mortgagee's receipt valid though security satisfied.	The receipt of the mortgagee is a complete protection to a <i>bonâ fide</i> purchaser without notice, even though the security should prove to have been satisfied (<i>Dicker v. Angerstein</i> , 3 Ch. D. 600). (2.) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act; but with this variation, that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money

or securities, and of conversion of securities into money, instead of those incident to sale.

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MORTGAGES.

This section enables a mortgagee to give a discharge, not only for money arising by sale, but also for money or securities assigned by the mortgage or arising thereunder; for instance, to give a receipt for the surplus on a sale by a prior mortgagee, or in case of a mortgage of a policy or of a reversionary interest in stock, to give a receipt for the policy money or for the stock, and to apply the money in discharge of the debt and costs, and in case of stock, to sell the stock for that purpose.

Sale; Insurance; Receiver; Timber.

Mortgagee's receipt for surplus sale money and securities.

23.—(1.) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, then shall not exceed two third parts of the amount that would be required, in case of total destruction, to restore the property insured.

Amount and application of insurance money.

(2.) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases (namely):

- (i.) Where there is a declaration in the mortgage deed that no insurance is required:
- (ii.) Where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed:
- (iii.) Where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor, to the amount in which the mortgagee is by this Act, authorised to insure.

(3.) All money received on an insurance effected under the mortgage deed or under this Act shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4.) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance be applied in or towards discharge of the money due under his mortgage.

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SS. 23, 24.

MORTGAGES.

Sale; Insurance; Receiver; Timber.

*When insurance money to be expended on reinstating.

Appointment, powers, remuneration, and duties of receiver.

*Under 14 Geo. 3, c. 78, s. 83, insurance money on houses and buildings must at the request of any person interested, or may in cases of suspicion, be applied in reinstating them: see *Ex parte Gorely*, 4 D. J. & S. 477.

24.—(1.) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

(2.) The receiver shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides.

(3.) The receiver shall have power to demand and recover all the income of the property of which he is appointed receiver, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts, accordingly, for the same.

Under this subs. the receiver acts subject to the rights of any prior mortgagee and to the powers of his receiver (see n. to subs. 8, *post*).

(4.) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorize the receiver to act.

(5.) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

(6.) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum on that gross amount, or at such higher rate as the Court

thinks fit to allow, on application made by him for that purpose.

(7.) The receiver shall, if so directed in writing by the mortgagee, insure and keep insured against loss or damage by fire, out of the money received by him, any building, effects, or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

(8.) The receiver shall apply all money received by him as follows (namely):

- (i.) In discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property; and
- (ii.) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and
- (iii.) In payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and
- (iv.) In payment of the interest accruing due in respect of any principal money due under the mortgage;

and shall pay the residue of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property.

The power to appoint a receiver is by s. 19 given to the mortgagee to the like extent as if in terms conferred by the mortgage deed. The receiver of a second or subsequent mortgagee will therefore (see subs. 3 of this s.) be liable to be superseded by the receiver of a prior mortgagee when appointed, but the receiver for the time being, whether under a first or any subsequent mortgage, will, it is conceived, have under subs. 3 and 4 power to recover and give a legal discharge for rent. To prove that the person appointing the receiver is actually a mortgagee, the mortgage deed must be produced. Where it is desired

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MORTGAGEE.

Sale; Insurance; Receiver; Timber.

Position of a receiver.

Power to appoint, how proved.

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SS. 24, 25.

MORTGAGEE.

Sale; Insurance; Receiver; Timber.

Repairs by receiver.

Distress after receiver appointed.

Appointment by Court.

to avoid this, a counterpart of the mortgage may be taken. As mortgage deeds will in future be short, the cost of a counterpart will be much less than that of the old receivership deed.

Any necessary or proper repairs which a mortgagee could not himself make, unless expressly authorised, without incurring the liability of a mortgagee in possession, may be made by the receiver, if directed in writing by the mortgagee under subs. 8 (iii.).

When a receiver under this Act has been appointed the Court will restrain the mortgagor from distraining for rent, even, it seems, though the receiver be negligent: *Bayly v. Went*, W. N., 1884, p. 197. When an action is pending the receiver should be appointed by the Court, and not under this Act: *Tillett v. Nixon*, 25 Ch. D. 238.

Action respecting Mortgage.

Action respecting mortgage.

Sale of mortgaged property in action for foreclosure, &c.

25.—(1.) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption, in the alternative.

(2.) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the mortgaged property, on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum fixed by the Court, to meet the expenses of sale and to secure performance of the terms.

(3.) But, in an action brought by a person interested in the right of redemption and seeking a sale, the Court may, on the application of any defendant, direct the plaintiff to give such security for costs as the Court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4.) In any case within this section the Court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers.

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Action respecting Mortgage.

(5.) This section applies to actions brought either before or after the commencement of this Act.

(6.) The enactment described in Part II. of the Second Schedule to this Act is hereby repealed.

(7.) This section does not extend to Ireland.

As to this section, see observations on s. 5, *ante*.

The result of decisions (see Morgan's Chancery Acts, 196, 197, 5th ed.) was to give a very limited operation to the 48th section of 15 & 16 Vict. c. 86, now repealed (see second schedule, Part II.), and replaced by this section.

15 & 16 Vict.
c. 86, s. 48.

An order for sale may be made under this section in a foreclosure or redemption action at any time before the action is concluded by a foreclosure absolute: *Union Bank of London v. Ingram*, 20 Ch. D. 463; on an interlocutory application before trial of the action: *Woolley v. Colman*, 21 *ib.* 169; or even on the motion for foreclosure absolute where a summons for further time has been previously taken out: *Weston v. Davidson*, W. N., 1882, p. 28.

Former law as to judgment for sale.

Orders for sale under this s.

An order for sale still usually directs the sale to be made, as before this Act (see Seton on Decrees, pp. 1396, 802, 4th ed.), subject to the incumbrances of such of the incumbrancers as do not consent. But the sum to meet their charges can be paid into Court under s. 5. Any whose charges cannot be so provided for must be made parties.

The owner of, or any incumbrancer on, an incumbered estate can under this section bring an action for sale and application of the proceeds (see note to s. 5, *ante*), but before commencing an action for redemption or sale he should be certain that he can provide the requisite deposit or security for costs, otherwise he may find himself foreclosed.

If the mortgagee asks for a sale under this section, the course of proceeding will be much the same as before the Act in a similar case. If the mortgagor asks for a sale instead of being foreclosed as defendant, or bound to redeem as plaintiff, the course of proceeding is new. In *Woolley v. Colman*, 21 Ch. D. 169, an assignee of the equity of redemption was plaintiff, the property being subject to several mortgages. A sale was directed at a reserve price sufficient to pay the two first mortgagees, who opposed a sale, and with the assent of the subsequent mortgagees the conduct of the sale was given to the mortgagor, who was ordered to give security for the costs of it. The sale was allowed to be made out of Court, but the proceeds were directed to be paid into Court. In *Wade v. Wilson*, 22 Ch. D. 235, a foreclosure action, in which one of the defendants, the mortgagor, did not appear, and the

Course where sale asked by mortgagee or mortgagor.

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SS. 25, 26, 27. other, the second mortgagee, made default in pleading, the usual account was directed, and then a sale of a sufficient part of the property to pay the amount found due to the plaintiff. In *Oldham v. Stringer*, W. N., 1884, p. 235, there was a deposit of deeds without any memorandum, and a sale was ordered instead of foreclosure.

STATUTORY MORTGAGE.

Form of
statutory
mortgage in
schedule.

V.—STATUTORY MORTGAGE.

26.—(1.) A mortgage of freehold or leasehold land may be made by a deed expressed to be made by way of statutory mortgage, being in the form given in Part I. of the Third Schedule to this Act, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

(2.) There shall be deemed to be included, and there shall by virtue of this Act be implied, in the mortgage deed—

First, a covenant with the mortgagee by the person expressed therein to convey as mortgagor to the effect following (namely):

That the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, and will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly payments, the first thereof to be made at the end of six calendar months from the day stated for payment of the mortgage money.

Secondly, a proviso to the effect following (namely):

That if the mortgagor, on the stated day, pays to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall re-convey the mortgaged property to the mortgagor, or as he shall direct.

27.—(1.) A transfer of a statutory mortgage may be made by a deed expressed to be made by way of statutory transfer of mortgage, being in such one of the three forms

Forms of
statutory
transfer of
mortgage in
schedule.

(A.) and (B.) and (C.) given in Part II. of the Third Schedule to this Act as may be appropriate to the case, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

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—
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—

(2.) In whichever of those three forms the deed of transfer is made, it shall have effect as follows (namely):

(i.) There shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred, who, with his executors, administrators and assigns, is hereafter in this section designated the transferee, the right to demand, sue for, recover, and give receipts for the mortgage money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee:

(ii.) All the estate and interest, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.

(3.) If the deed of transfer is made in the form (B.), there shall also be deemed to be included, and there shall by virtue of this Act be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor to the effect following (namely):

That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed; and will thereafter, as long as the mortgage money, or any part thereof, remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest.

(4.) If the deed of transfer is made in the form (C.), it shall, by virtue of this Act, operate not only as a

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statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of this section shall have effect in relation thereto, accordingly; but it shall not be liable to any increased stamp duty by reason only of its being designated a mortgage.

A transfer of a mortgage, although further security is given, is only chargeable with duty as a transfer (33 & 34 Vict. c. 97, s. 109; *Wale v. Commissioners of Inland Rev.*, 4 Ex. D. 270).

Implied
covenants,
joint and
several.

28. In a deed of statutory mortgage, or of statutory transfer of mortgage, where more persons than one are expressed to convey as mortgagors, or to join as covenantors, the implied covenant on their part shall be deemed to be a joint and several covenant by them; and where there are more mortgagees or more transferees than one, the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect to the share or distinct sum secured to him.

Form of re-
conveyance of
statutory
mortgage in
schedule.

29. A re-conveyance of a statutory mortgage may be made by a deed expressed to be made by way of statutory re-conveyance of mortgage, being in the form given in Part III. of the Third Schedule to this Act, with such variations and additions, if any, as circumstances may require.

The object of ss. 26-29 is to enable mortgages, transfers of mortgage, and reconveyances to be made in very short forms. The forms are given in the third schedule. They do not readily admit of much alteration, and will probably be used only in quite simple cases, where proper legal advice is dispensed with.

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MORTGAGE
ESTATES ON
DEATH.

Devolution of
trust and

VI.—TRUST AND MORTGAGE ESTATES ON DEATH.

30.—(1.) Where an estate or interest of inheritance, or limited to the heir as special occupant, in any tenements or hereditaments, corporeal or incorporeal, is vested

on any trust, or by way of mortgage, in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time, in like manner as if the same were a chattel real vesting in them or him; and accordingly all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative from time to time, with all the like incidents, but subject to all the like rights, equities, and obligations, as if the same were a chattel real vesting in them or him; and for the purposes of this section, the personal representatives, for the time being, of the deceased, shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers.

(2.) Section four of the Vendor and Purchaser Act, 1874, and section forty-eight of the Land Transfer Act, 1875, are hereby repealed.

(3.) This section, including the repeals therein, applies only in cases of death after the commencement of this Act.

This section includes copyholds which are "an estate or interest of inheritance" in "tenements," and operates to constitute the executor or administrator devisee of trust and mortgage estates: *Re Hughes*, W. N., 1884, p. 53. Whether as to any particular land he is such devisee will be shewn in the same manner as if there were an actual devise.

The word "hereditaments" includes, more clearly than the word "land," a personal inheritance, as an annuity to one "and his heirs." (See Co. Lit. 2a, 20a; *Stafford v. Buckley*, 2 Ves. Sen. 170; *Holder-ness v. Carmarthen*, 1 Brown, C. C. 377.) Such annuities are sometimes granted by corporations (Manchester, for instance) charged on the borough fund.

No question as to assent by an executor arises under this section. He is put in the position of devisee, and cannot properly convey a trust estate except to a duly appointed trustee; nor does an executor generally assent to a bequest of leaseholds held in trust, as he only assigns them to a duly appointed trustee; nor to a bequest of lease-

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TRUST AND
MORTGAGE
ESTATES ON
DEATH.

mortgage
estates on
death.

37 & 38 Vict.
c. 78.
38 & 39 Vict.
c. 87.

Copyholds
included.

Also a personal
inheritance.

No question as
to assent
arises.

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<p>s. 30. TRUST AND MORTGAGE ESTATES ON DEATH.</p>	<p>holds in mortgage, as he retains the legal estate in order to get in and receive the money.</p>
<p>Heir excluded as trustee.</p>	<p>The constitution of the personal representative to be trustee operates like a devise to exclude the heir from being trustee.</p>
<p>Whether the heir takes until administration.</p>	<p>In the case of <i>Re Pilling's Trusts</i>, 26 Ch. D. 432, Pearson J. asked "What happens when there is no personal representative? If the legal estate does not vest in the heir, where is it?" The same might be asked as to a term of years. However the rule of law that the freehold cannot be in suspense may make a distinction. This case shews that the heir cannot convey the fee as he, if taking, takes only until a representative is constituted.</p>
<p>Executors may convey before probate.</p>	<p>Executors derive their title from the will, not from the probate, and can under this s. convey before probate a legal freehold as well as a term held in trust by their testator. Probate is only proof of their title. If all the executors die before probate, subsequent letters of administration are sufficient proof of that title (<i>Williams on Executors</i>, vol. i., p. 309, 8th ed.).</p>
<p>Devise of trust estates no longer proper.</p>	<p>It will now be unnecessary, and also useless, to make any devise of trust or mortgage estates. Their devolution is assimilated in all respects to the devolution of a term of years, which must pass to the personal representative. Notwithstanding any devise, the personal representative is the person to convey, and is in all cases the "heir" and "assign" for the purpose of exercising all trusts and powers.</p>
<p>Title to freehold and copyhold trust estate same as leasehold.</p>	<p>On the death of a personal representative a new representative must be constituted just as in case of personalty. If the executor of a trustee or mortgagee dies and there is no executor to his estate, letters of administration must be taken out to the trustee or mortgagee. The title to a freehold or copyhold (see <i>Re Hughes</i>, W. N., 1884, p. 53) trust or mortgage estate will in fact be made exactly in the same way if it had been a term of years held in trust or mortgage.</p>
<p>Trust estate must still be limited to "heirs," &c.</p>	<p>Though a trust or mortgage estate now passes to the personal representative it must still be conveyed to the trustees or mortgagees "and their heirs" or "in fee simple" (see s. 51), in order to give them the fee simple.</p>
<p>Devolution of powers of trustees.</p>	<p>The powers of trustees devolve only on those who are specified as persons to execute the trust; and s. 28 carries the power to the survivor where the trust is created after 1881. Thus a devise to A. and B. on trust to sell, enables A. and B. and also the survivor of them to sell. The decision in <i>Osborne v. Rowlett</i>, 13 Ch. D., 774, appears to be an authority that the same applies to trusts created before 1882, but as to the actual decision see <i>Re Morton and Hallett</i>, 15 Ch. D. 143. Where heirs are not specified, the heir of the survivor could not, as it seems (see <i>Re Morton & Hallett</i>), before 1882 have sold, though the fee devolved on him, consequently the personal representative of the survivor could not now sell: <i>Re Ingleby & Roak & the Norwich Union Company</i>, 13 L. R. Ch. D. (Ireland) 326. If the</p>

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devise is "to A. and B. and their heirs on trust to sell," or to A. and B. in fee simple upon trust "that they and their heirs," or "executors or administrators," or "the trustees or trustee for the time being" (*Re Morton and Hallett*) "shall sell," then under s. 30 the personal representative of the survivor can sell. The effect of s. 30 is that there cannot now be any "assign" of a trust estate by means of a devise. The only "assign" is a trustee duly appointed, and s. 31 (5) gives him all the powers of an original trustee, so that it is unnecessary now to specify assigns in order to enable them to execute the trust.

S. 30.
—
TRUST AND
MORTGAGE
ESTATES ON
DEATH.
—

Where there is a valid contract binding on both vendor and purchaser, and at the vendor's death, either he has made out his title according to the contract, or the purchaser has accepted the title however bad, the vendor is a trustee for the purchaser (*Lysaght v. Edwards*, 2 Ch. D. 506, 507), and this section applies.

When vendor
trustee for
purchaser.

This section renders obsolete, as regards persons dying after 1881, all the decisions as to what words pass trust and mortgage estates, and as to whether the trusteeship passes to the devisees of trust estates, discussed in 1 Jarm. Wills, p. 709 *et seq.* 4th ed. If a testator wishes that his trust estates should go to particular persons, he can appoint them executors for that special purpose: see Wms. Exors. 387, 8th ed.

Cases affected.

As to the sect. of the Land Transfer Act, 1875, repealed by this sect., see note to V. & P. A. s. 5, *ante*.

VII.—TRUSTEES AND EXECUTORS.

TRUSTEES AND
EXECUTORS.

The following is a summary of the powers conferred on trustees by the C. A., and the provisions relating to trustees and trust estates contained in that Act, the V. & P. A., and the C. A., 1882.

—
Powers of
trustees.

Trustees

- (i.) May under a trust or power of sale, sell, or concur in selling, by auction or private contract, together or in lots, &c.: C. A. s. 35;
- (ii.) May as vendors or purchasers adopt the conditions implied in the C. A. (see s. 66 of that Act), or in s. 2 of the V. & P. A. (see s. 3 of that Act);
- (iii.) May give receipts: C. A. s. 36;
- (iii.) is retrospective, (i.) and (ii.) are not, and apply so far as a contrary intention is not expressed in the instrument of trust;
- (iv.) May manage land of an infant, but in case of a female only while she is unmarried, and may apply the income thereof for maintenance, education, or benefit, and accumulate surplus: C. A. s. 42;
- (v.) May apply in like manner the income of any property in which any infant is interested: C. A. s. 43;
- (iv.) and (v.) apply only so far as a contrary intention is not ex-

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- SS. 30, 31. pressed in the instrument under which the infant's interest arises;
(v.) is retrospective, (iv.) is not.
- TRUSTEES AND EXECUTORS. (vi.) Trustees or an executor (but not an administrator) may compound and compromise, and an executor may pay or allow any debt or claim: C. A. s. 37;
- (vii.) Powers or trusts given to executors or trustees are exercisable by the survivors or survivor: C. A. s. 38.
- Powers of executors. (vi.) is retrospective, (vii.) is not; (vi.) in regard to trustees, and (vii.) in regard to executors or trustees, apply only if a contrary intention is not expressed in the instrument of trust.
- (viii.) A married woman being a bare trustee of freeholds or copyholds may convey or surrender them as a feme sole: V. & P. A. s. 6. (This provision is superseded by the M. W. P. A., 1882, as to a woman married or becoming a trustee after 1882.)
- The C. A. contains also provisions:
- (ix.) For the appointment of new trustees with power to increase the number but without any obligation to appoint more than one where only one was originally appointed or to fill up the original number where more than two were originally appointed: s. 31;
- (x.) For the retirement of a trustee without appointing a successor: s. 32;
- (xi.) For giving trustees appointed by the Court the powers of original trustees: s. 33;
- (xii.) For vesting the trust property on the appointment of a new trustee, or the retirement of a trustee under (x.): s. 34, with the exceptions mentioned in subs. 3;
- (xiii.) For the devolution of the trust estate on the personal representatives of a sole trustee dying after 1881, notwithstanding his will: s. 30;
- The C. A., 1882, s. 5 provides
- (xiv.) For the appointment of separate sets of trustees.
- (ix.) to (xi.) and (xiv.) are retrospective; (xii.) applies only to deeds appointing new trustees or authorizing retirement under s. 32, executed after 1881; (xiii.) is not retrospective.
- Petitions for the appointment of new trustees ought not to be presented where the power given by the following section can be exercised: *Re Gibbons' Trusts*, 30 W. R. 287, W. N., 1882, p. 12.
- Where petitions now unnecessary.
- Appointment of new trustees, vesting of trust property, &c.
- 31.—(1.)** Where a trustee, either original or substituted, and whether appointed by a Court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged from the trusts or powers reposed in or conferred on him, or refuses

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or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for this purpose by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the United Kingdom, desiring to be discharged, refusing or being unfit, or being incapable, as aforesaid.

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TRUSTEES AND
EXECUTORS,

This section includes the case of disclaimer. After disclaimer, which relates back, the person disclaiming is considered as never having been a trustee, but up to the time of disclaimer the trust estate remains vested in him, otherwise there would be nothing to disclaim. The estate being vested in him on trust at the moment of disclaimer, he necessarily is then a trustee, and is a trustee who refuses. The estate passes to him without any express assent, but subject to the right of dissenting: see Lewin, 176, 6th ed.; *Smith v. Wheeler*, 1 Vent. 128; *Siggers v. Evans*, 5 Ell. & Bl. 367, 382. In *D'Adhemar v. Bertrand*, 35 Beav. 19, it was assumed that a disclaiming trustee was included in the words "trustee who shall refuse to act" under Lord Cranworth's Act, s. 27; see also Lewin, 541, 6th ed. A bankrupt trustee is a trustee unfit to act: *Re Barker's Trusts*, 1 Ch. D. 43. He is bound to retire if requested, and may be removed under s. 117 of the Bankruptcy Act, 1869: *Re Adams' Trust*, 12 Ch. D. 634 (see now s. 147 of the Bankruptcy Act, 1883); and a new trustee may be appointed in his place under this section.

A disclaiming trustee is a refusing trustee.

Bankruptcy is
unfitness.

In settlements made since Lord Cranworth's Act, the form of the power generally is "that A. B. shall have power to appoint new trustees" without specifying in what cases. Under this form, the power being unlimited, A. B. will be the "person nominated for this purpose" within the meaning of this section. (See *Re Walker and Hughes' Contract*, 24 Ch. D. 698.) But if the power expressly specifies the cases in which an appointment may be made and includes only some of the cases mentioned in this section, then as regards the remaining cases the donee of the power is not "the person nominated for this purpose" within this section, and the appointment must be made by the surviving or continuing trustee or his personal representatives (see *Cecil v. Langdon*, 28 Ch. D. 1). This applies whether the settlement be made before or after the commencement of this Act.

Where power does not extend to all cases in this s.

Where power limited to certain cases.

A power to appoint new trustees continues, notwithstanding alienation by the donee of the power of all his interest (*Hardaker v. Moor-*

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S. 31.

TRUSTEES AND
EXECUTORS.

Personal representative
not bound to
appoint.

Administration for the
purpose only
of appointing
new trustees.

Continuing
trustee.
Surviving
trustee.

house, W. N., 1884, p. 90), and also notwithstanding a decree in an administration action, but then it should be exercised with the sanction of the Court: *Re Gadd, Eastwood v. Clark*, 23 Ch. D. 134; the personal representative of a deceased trustee is not bound to exercise it: *Re Sarah Knight's Will*, 26 Ch. D. 82.

The registrars in the Probate Registers have refused to grant letters of administration merely for the purpose of enabling the power given by this section to be exercised where there are no assets.

A trustee who has made up his mind to retire is not a continuing trustee: *Travis v. Illingworth*, 2 Dr. & Sm. 344; *Re Norris, Allen v. Norris*, 27 Ch. D. 333, dissenting from *Re Glenny and Hartley*, 25 Ch. D. 611. Nor is he a surviving trustee within the meaning of a power given to the surviving trustee, though he is the actual survivor: *Travis v. Illingworth, ubi sup.*

(2.) On an appointment of a new trustee, the number of trustees may be increased.

This subs. is applicable to the appointment of more than one new trustee, as singular imports the plural, see n. to s. 50, *infra*.

(3.) On an appointment of a new trustee, it shall not be obligatory to appoint more than one new trustee, where only one trustee was originally appointed, or to fill up the original number of trustees, where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust.

"New"
trustees.

Two existing trustees cannot, under the Trustee Acts, be reappointed in the place of themselves and a lunatic trustee, and the practice is not altered by this Act, although the word "new" is not used in subs. 1: *Re Aston*, 23 Ch. D. 217.

(4.) On an appointment of a new trustee any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

This subs. must be read in connection with s. 34 (1), *infra*, rendering a conveyance of the trust property unnecessary on the appointment of a new trustee, except in cases within subs. 3 of that s.

(5.) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by

assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

SS. 31, 32.
TRUSTEES AND
EXECUTORS.

(6.) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator; and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

The first clause of this subs. does not enable the personal representative of a person nominated a trustee, but dying before the testator, to appoint new trustees. Though nominated a trustee, he never became a last surviving or continuing trustee within s. 31.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

Where under an instrument, whether dated before this Act or subsequently, a limited power to appoint new trustees is given to a specified person, say, in case only of trustees refusing, it is conceived that the power given to the surviving or continuing trustee by subs. (1) applies to all the other cases there mentioned, and that the omission to provide for all those cases is not sufficient to shew a contrary intention within this subs. (See *Cecil v. Langdon*, 28 Ch. D. 1.)

Contrary intention.

(8.) This section applies to trusts created either before or after the commencement of this Act.

This and the subsequent sections included in Part VII. of this Act replace Part III. of Lord Cranworth's Act, which is repealed (see second schedule, Part III.). The power to appoint new trustees applies to all instruments past and future, including those dated before Lord Cranworth's Act, and to which that Act did not apply: see *Re Walker and Hughes' Contract*, 24 Ch. D. 698.

Power
retrospective.

By the C. A., 1882, s. 5, *infra*, separate sets of trustees may be appointed for distinct trusts.

Appointment
of separate
sets of
trustees.

32.—(1.) Where there are more than two trustees, if one of them by deed declares that he is desirous of being

Retirement of
trustee.

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SS. 32, 33. discharged from the trust, and if his co-trustees and such
TRUSTEES AND other person, if any, as is empowered to appoint trustees,
EXECUTORS. by deed consent to the discharge of the trustee, and to
the vesting in the co-trustees alone of the trust property,
then the trustee desirous of being discharged shall be
deemed to have retired from the trust, and shall, by the
deed, be discharged therefrom under this Act, without
any new trustee being appointed in his place.

On discharge
of a trustee
the others have
all powers.

Under this section the continuing trustees alone will have the powers of the original trustees. The due discharge of one of several trustees leaves the others whole and sole trustees as in case of a disclaimer: *Cafe v. Bent*, 5 Hare, 37. If the power be merely personal, unconnected with property, for instance to consent to a marriage, it is not a case of trusteeship within these sections, but the power may be disclaimed under C. A. 1882, s. 6.

(2.) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

This subs. must be read in connection with s. 34 (2), *infra*, rendering a conveyance of the trust property unnecessary on the retirement of a trustee except in cases falling within subs. 3 of that s.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4.) This section applies to trusts created either before or after the commencement of this Act.

Powers of new
trustee ap-
pointed by
Court.

33.—(1.) Every trustee appointed by the Court of Chancery, or by the Chancery Division of the Court, or by any other Court of competent jurisdiction, shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(2.) This section applies to appointments made either before or after the commencement of this Act.

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This section replaces s. 27 of Lord Cranworth's Act, and applies to all instruments past and future. A new trustee appointed by the Court under its ordinary jurisdiction in equity could not exercise a legal power, as, for instance, a power of sale in a settlement operating by revocation and appointment of uses (see *Newman v. Warner*, 1 Sim. N.S. 457, 461). To enable a new trustee to exercise a legal power it was necessary that the appointment should be made on petition under the Trustee Act, 1850: see s. 33 of that Act. As to trustees appointed by the Court of Chancery, see Ld. C.'s Act, s. 27, and Morg. Ch. Ord., p. 101 (u) 5th Ed. It is conceived that under this section a trustee appointed by judgment or order in an action simply, and not under the Trustee Acts, may validly exercise legal powers, and that there will be no necessity for a petition under those Acts.

SS. 33, 34.

TRUSTEES AND
EXECUTORS.

Retrospective.

As to exercise
of legal powers.

34.—(1.) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right.

Vesting of
trust property
in new or
continuing
trustees.

This section applies to all deeds executed after the commencement of the Act by which a new trustee is appointed to perform "any trust," and is not confined to cases where the powers of the Act are exercised. As singular includes the plural, it also applies where more new trustees than one are appointed. The vesting declaration may therefore now be used on an appointment of a trustee in the ordinary mode under a power in a settlement, and whether the settlement be dated before or after the commencement of the Act. It must be by deed and not by writing merely, though the mere appointment of a trustee under s. 31 may be by writing only; and it must be contained in the deed appointing or discharging the trustee.

Vesting
declaration
applicable to
all appoint-
ments.

Must be by
deed and in
deed of
appointment
or discharge.

Thus as under the old practice a deed will always be necessary where there is property to transfer, and will be chargeable with stamp duty on the appointment and also on the vesting order (*Hadgett v. Commissioners of Inland Revenue*, 3 Ex. D. 46). In the case of a chose in action notice of assignment should also be given.

Stamp duties

Chose in
action.

The aid of this section is required only for the purpose of vesting a legal interest. The mere appointment of a new trustee or several new trustees in itself operates to vest all equitable interests in the persons

No vesting
declaration
required for
equities.

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S. 34.

TRUSTEES AND
EXECUTORS.

Effect of
vesting clause.

As to where
there should
be separate
deed.

who are the trustees (*Dodson v. Powell*, 18 Law Journ. (Ch.) 237), and the object of this section is to extend that principle so far as is not inconvenient to legal estates and rights. It may, however, be convenient to have the proper declaration in all cases.

The words "who by virtue of the deed become and are *the* trustees for performing the trust" include the old trustees as well as the new. The new trustees become trustees by virtue of the deed, but do not become the trustees for performing the trust, unless they are the sole trustees. The new and the old trustees together become the trustees for performing the trust. But where there are no old trustees, or none continuing to act, the new trustees solely become the trustees for performing the trust.

Cases occur, as where lands are purchased with settlement money, in which it may be convenient to have a separate actual conveyance. The declaration which effects the vesting of the other property subject to the settlement will then omit the property separately conveyed. There must be an actual conveyance where the deed does not contain an appointment of a new trustee or discharge of a trustee.

(2.) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3.) This section does not extend to any legal estate or interest in copyhold or customary land, or to land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner prescribed by or under Act of Parliament.

Reasons for
exceptions.

The objects of subs. 3 are to save the rights of the lord as regards customary land, to prevent the trusts of the money appearing on the title of land mortgaged, and to reserve to companies and other bodies the right to require transfers of their stock to be made in the statutory form.

Vesting order
made.

As to property to which the vesting declaration does not apply, and of which a transfer cannot be obtained, a vesting order will be made: *Re Harrison's Settlement*, W. N., 1883, p. 31.

CONVEYANCING AND LAW OF PROPERTY ACT. 91

*The vesting declaration applies only to property vested in the retiring trustee. A transfer of property outstanding in any one else must be obtained in the ordinary way.

SS. 34, 35.]

TRUSTEES AND EXECUTORS.

(4.) For purposes of registration of the deed in any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

*Trust property outstanding.

This subs. makes it necessary to search the deeds register against any person having power to appoint new trustees as well as against the trustees.

Register searches.

(5.) This section applies only to deeds executed after the commencement of this Act.

35.—(1.) Where a trust for sale or a power of sale of property is vested in trustees, they may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title, or other matter, as the trustees think fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss.

Power for trustees for sale to sell by auction, &c.

This s. merely operates to supply the common form provisions of a trust for sale or a power of sale. It did not replace Part I. of Lord Cranworth's Act, which was not repealed by this Act, but is now repealed by the Settled Land Act, s. 64.

As to the duty of trustees where trust property is sold along with other property not subject to the trust: see *Rede v. Oakes*, 4 D. J. & S. 505; *Re Cooper and Allen's Contract*, 4 Ch. D. 802. The trustees must exercise their powers in a reasonable manner: *Dunn v. Flood*, 25 Ch. D. 629, affirmed, W. N., 1885, p. 9.

As to sale of trust property along with other property.

(2.) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3.) This section applies only to a trust or power

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SS. 35, 36, 37. created by an instrument coming into operation after the commencement of this Act.

TRUSTEES AND EXECUTORS.

Words required in trust for or power of sale. A sufficient trust for sale may now be created by using the words "Upon trust to sell the said premises," and a sufficient power of sale by using the words "with power to sell the said premises," without more.

Trustees receipts.

36.—(1.) The receipt in writing of any trustees or trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to them or him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

(2.) This section applies to trusts created either before or after the commencement of this Act.

Receipt clause extended.

This section replaces and is more comprehensive than s. 29 of Lord Cranworth's Act, which was confined to money payable under trusts or powers created after the passing of that Act (s. 34). The power to give receipts conferred by 22 & 23 Vict. c. 35, s. 23, had a similar limited operation.

Application of this section.

Where trustees for sale, having no express power to give receipts, had sold to a railway company, the power given by this Act was held to apply, and the purchase-money, which had been paid into Court, was ordered to be paid to them without serving the *cestuis que trust*: *Re Thomas's Settlement*, W. N., 1882, p. 7.

Power for executors and trustees to compound, &c.

37.—(1.) An executor may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2.) An executor, or two or more trustees acting together, or a sole acting trustee where, by the instrument, if any, creating the trust, a sole trustee is authorized to execute the trusts and powers thereof, may, if and as he or they think fit, accept any composition, or any security, real or personal, for any debt, or for any property, real or personal, claimed, and may allow any time for payment of any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's estate or to the trust, and for any of those purposes may

enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

SS. 37, 38, 39.
TRUSTEES AND
EXECUTORS.

(3.) As regards trustees, this section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies to executorships and trusts constituted or created either before or after the commencement of this Act.

This section does not apply to an administrator, who might be merely a creditor, or some one not necessarily a proper person to be invested with such large powers; see *Re Clay and Tetley*, 16 Ch. D. 3.

Does not apply
to an adminis-
trator.

It is conceived that where there are two or more trustees they must all act together under this section, except in trusts of a public character or where there is a special authority enabling the majority to bind the minority: see *Lewin on Trusts*, 228, 6th ed.

Two or more
trustees must
act together.

38.—(1.) Where a power or trust is given to or vested in two or more executors or trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

Powers to two
or more
executors or
trustees.

(2.) This section applies only to executorships and trusts constituted after or created by instruments coming into operation after the commencement of this Act.

Compare the Act 21 Hen. VIII. c. 4.

This section removes any difficulty as to whether one surviving executor can sell under a devise to executors to sell (see *Sug. Powers*, 126 *et seq.*, 8th ed.); but it does not affect the rule that a power to two or more by name, who are not executors, being a personal power, will not survive (*Sug. Powers*, 128, 8th ed.).

As to survivor
of executors
selling.

VIII.—MARRIED WOMEN.

MARRIED WOMEN.

39.—(1.) Notwithstanding that a married woman is restrained from anticipation, the Court may, if it thinks

Power for
Court to bind

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ss. 39, 40.	fit, where it appears to the Court to be for her benefit, by judgment or order, with her consent, bind her interest in any property.
MARRIED WOMEN.	
interest of married woman.	(2.) This section applies only to judgments or orders made after the commencement of this Act.
Cases affected.	Before this Act the Court had no power to bind the interest of a married woman who was restrained from anticipation, however beneficial it might be to her to do so: see <i>Robinson v. Wheelwright</i> , 21 Beav. 214; 6 D. M. & G. 535; <i>Tussaud v. Tussaud</i> , 9 Ch. D. 375, per James, L.J.; <i>Smith v. Lucas</i> , 18 Ch. D. 531.
Applications under this section.	Applications under this section must be made by summons in Chambers, s. 69 (3), <i>post</i> , and not by petition: <i>Re Lillwall's Settlement</i> , 30 W. R. 243, W. N., 1882, p. 6. See on the intention of this section, <i>Tamplin v. Miller</i> , W. N., 1882, p. 44; <i>Re Warren's Settlement</i> , 52 L. J. Ch. 928, W. N., 1883, p. 125; and see Orders made under this section in <i>ex-parte Thompson</i> , W. N., 1884, p. 28; <i>Sedgwick v. Thomas</i> , 48 L. T. 100; <i>Musgrave v. Sandeman</i> , <i>ib.</i> 215; and <i>Re Flood's Trusts</i> , 11 L. R. Ch. D. (Ireland) 355; but refused in <i>Re Warren's Settlement</i> , <i>ubi sup.</i> , and in <i>Re Wheatley</i> , <i>Smith v. Spence</i> , 27 Ch. D. 606.
How consent taken.	The consent of a married woman under this section need not be ascertained by a separate examination: <i>Hodges v. Hodges</i> , 20 Ch. D. 749.
Power of attorney of married woman.	<p>40.—(1.) A married woman, whether an infant or not, shall by virtue of this Act have power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she might herself execute or do; and the provisions of this Act relating to instruments creating powers of attorney shall apply thereto.</p> <p>(2.) This section applies only to deeds executed after the commencement of this Act.</p> <p>This section when originally inserted had more special reference to the clauses struck out in the House of Commons enabling married women to convey by deed simply without acknowledgment. An acknowledged deed is necessarily incapable of being executed by attorney, but under this section a power of attorney will be effectual as regards all other deeds or acts capable of being executed or done by a married woman.</p> <p>For farther provisions as to powers of attorney, see ss. 46–48, and C. A., 1882, ss. 8, 9, <i>post</i>; and see s. 50, <i>post</i>, enabling a married woman</p>

to convey freehold land, as defined by s. 2 (ii.), *ante*, and chooses in action to her husband alone or jointly with another person; and see C. A., 1882, s. 7, *post*, as to acknowledgment of deeds by married women.

SS. 40, 41, 42.

MARRIED
WOMEN.

IX.—INFANTS.

41. Where a person in his own right seised of or entitled to land for an estate in fee simple, or for any leasehold interest at a rent, is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877.

INFANTS.

Sales and leases on behalf of infant owner. 40 & 41 Vict. c. 18.

This section enables the Court for the benefit of an infant to sell his fee simple estate, not only where he has acquired it under a settlement (see definition of "settlement" in the Settled Estates Act, 1877), but also where it has come to him by descent or devise in fee. Before this Act the Court had no authority to sell the real estate of an infant upon the mere ground that a sale would be beneficial (see *Calvert v. Godfrey*, 6 Beav. 97; and cases cited, Dart, V. & P. 1223 (s), 5th ed.).

Sale of infant's land in fee simple.

It also enables the Court to authorize leases and sales of the infant's land of every tenure, and it is conceived that the guardians of an infant may under this section, and ss. 46 and 49 of the Settled Estates Act, 1877, grant leases for twenty-one years of the infant's land without the authority of the Court. As to the power of the Court to authorize leases of infant's land under 11 Geo. 4 and 1 Will. 4, c. 65, see Simpson on Infants, p. 334, and *Re Letchford*, 2 Ch. D. 719.

Leases and sales of infant's land generally.

All the powers of the Settled Estates Act, 1877, may be executed by the guardians on behalf of the infant (s. 49).

In *Re Liddell, Liddell v. Liddell*, 31 W. R. 238, W. N., 1882, p. 183, property was devised to the sons and daughters of a testator successively on their attaining the age of twenty-one years, and in default of any son or daughter to the testator's brother, who was of age. On the petition of the sons and daughters, two of whom were infants, asking a sale, it was held that the estate came within this section, notwithstanding the gift over.

Leases, sales, &c., of land to which an infant is absolutely entitled may now be effected under the Settled Land Act, 1882: see ss. 59, 60.

42.—(1.) If and as long as any person who would but for this section be beneficially entitled to the possession of any land is an infant, and being a woman is also unmarried, the trustees appointed for this purpose by the settlement, if any, or if there are none so appointed, then the persons, if any, who are for the time being under the

Management of land and receipt and application of income during minority.

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INFANTS.
—

settlement trustees with power of sale of the settled land, or of part thereof, or with power of consent to or approval of the exercise of such a power of sale, or if there are none, then any persons appointed as trustees for this purpose by the Court, on the application of a guardian or next friend of the infant, may enter into and continue in possession of the land; and in every such case the subsequent provisions of this section shall apply.

Meaning of
settlement.

The word "settlement" includes all settlements by whatever instrument made, whether deed, will, writing, or Act of Parliament; this is clear from subs. 7, which refers to the instrument by which the settlement is made, and from the definition of "instrument," s. 2 (xiii.).

Applies where
legal estate
vested in
trustees.

This section includes the case where an infant takes by descent, also where the legal estate is vested in trustees upon trust to pay the rents and profits to an infant. By s. 2 (iii.) possession includes receipt of income, and income includes rents and profits.

(2.) The trustees shall manage or superintend the management of the land, with full power to fell timber or cut underwood from time to time in the usual course for sale, or for repairs or otherwise, and to erect, pull down, rebuild, and repair houses, and other buildings and erections, and to continue the working of mines, minerals, and quarries which have usually been worked, and to drain or otherwise improve the land or any part thereof, and to insure against loss by fire, and to make allowances to and arrangements with tenants and others, and to determine tenancies, and to accept surrenders of leases and tenancies, and generally to deal with the land in a proper and due course of management; but so that, where the infant is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions, on and subject to which the infant could, if of full age, cut the same.

(3.) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and

all outgoing not payable by any tenant or other person, and shall keep down any annual sum, and the interest of any principal sum, charged on the land.

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INFANTS.

Where, subject to certain trusts, an infant is absolutely entitled to the beneficial interest in land, the legal estate being in trustees, the Court has jurisdiction to direct the raising by mortgage of money for repairs: *Jackson v. Talbot*, 21 Ch. D. 786.

Mortgage for repairs on infant's property.

(4.) The trustees may apply at discretion any income which, in the exercise of such discretion, they deem proper, according to the infant's age, for his or her maintenance, education, or benefit, or pay thereout any money to the infant's parent or guardian, to be applied for the same purposes.

The power in this subs. and in s. 43 (i.) to pay income to the parent or guardian for the infant's maintenance, education, or benefit, necessarily implies a power for the parent or guardian to give receipts, and exempts a person paying from seeing to the application of the money, just as a like power to trustees is necessarily implied where they are directed to sell land and divide the proceeds amongst infants (*Sowarsby v. Lacy*, 4 Mad. 142; *Lavender v. Stanton*, 6 Mad. 46). Where the father is living the amount to be allowed for the maintenance is in the discretion of the trustees: *Wilson v. Turner*, 22 Ch. D. 521. But a trustee who is also one of two guardians cannot discharge himself from his duty as guardian by payment of the income to his co-guardian; strict voucher of items is not required, but a proper sum will be allowed: *Re Evans, Welch v. Channell*, 26 Ch. D. 58, 63.

Payment of income to parent or guardian.

Maintenance while father alive.

(5.) The trustees shall lay out the residue of the income of the land in investment on securities on which they are by the settlement, if any, or by law, authorized to invest trust money, with power to vary investments; and shall accumulate the income of the investments so made in the way of compound interest, by from time to time similarly investing such income and the resulting income of investments; and shall stand possessed of the accumulated fund arising from income of the land and from investments of income on the trusts following (namely):

The following are securities authorized by law for investment by trustees, namely, —

What investments of trust money authorized by law.

1. Consolidated 3 per cent. Annuities.

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INFANTS.

2. Real securities in the United Kingdom, or stock of the Bank of England or Ireland, if not expressly forbidden: 22 & 23 Vict. c. 35, s. 32; 23 & 24 Vict. c. 38, s. 12; real securities in England or Wales, proper for investment by trustees, being first mortgages of fee simple or copyhold lands, and in Ireland first mortgages of fee simple lands, or of leaseholds for lives at a head rent perpetually renewable, and also of lands held under fee farm grants made pursuant to 12 & 13 Vict. c. 105, and 31 & 32 Vict. c. 62.
3. East India stock created under Acts passed before the 20th August, 1867 (30 & 31 Vict. c. 132, s. 1), and under subsequent Acts, 32 & 33 Vict. c. 106; 36 & 37 Vict. c. 32; 37 & 38 Vict. c. 3; 40 & 41 Vict. c. 51; and 42 & 43 Vict. c. 60; stock created for the purpose of the East India Railway Purchase Act, 1879, and deemed to be East India Stock (42 & 43 Vict. c. 43, s. 9); and securities the interest of which is guaranteed by Parliament (30 & 31 Vict. c. 132, s. 2), if not expressly forbidden.
4. Reduced and New £3 per cent. and £2 10s. per cent. Government Annuities and Exchequer Bills, in cases where trustees can invest in Government or Parliamentary securities (23 & 24 Vict. c. 38, s. 11, and R. S. C. 1883, Or. xxii. r. 17).
5. £2 15s. and £2 10s. per cent. annuities, where there is power to invest in Consolidated or Reduced or New £3 per cent. Annuities: 47 and 48 Vict. c. 23, s. 6 (6).
6. Stock of the Metropolitan Board of Works where not forbidden, and where Government securities are authorized: 34 & 35 Vict. c. 47, s. 13.
7. Debenture stock of companies whose mortgages or bonds are authorized as an investment, unless the contrary is expressed: 34 & 35 Vict. c. 27.
8. Debentures issued under the Mortgage Debenture Act, 1865 (28 & 29 Vict. c. 78), as amended by 33 & 34 Vict. c. 20, in cases where trustees can invest in the shares, stock, mortgages, bonds, or debentures of companies incorporated by or acting under an Act of Parliament.
9. Securities of the Government of the Isle of Man created under 43 & 44 Vict. c. 8, where trustees can invest in Colonial Government securities.
10. Charges under the Improvement of Land Act, 1864, or mortgages thereof, where trustees are authorized to invest in real securities: 27 & 28 Vict. c. 114, s. 60.

The special Acts of many local authorities and corporations contain an express provision authorizing their debentures or stock to be taken by trustees. In all settlements therefore where such debentures or stock are not intended to be authorized, the investments should be directed to be made in specified securities "and not otherwise."

- (i.) If the infant attains the age of twenty-one years, then in trust for the infant ;
- (ii.) If the infant is a woman and marries while an infant, then in trust for her separate use, independently of her husband, and so that her receipt after she marries, and though still an infant, shall be a good discharge ; but
- (iii.) If the infant dies while an infant, and being a woman without having been married, then, where the infant was, under a settlement, tenant for life, or by purchase tenant in tail or tail male or tail female, on the trusts, if any, declared of the accumulated fund by that settlement ; but where no such trusts are declared, or the infant has taken the land from which the accumulated fund is derived by descent, and not by purchase, or the infant is tenant for an estate in fee simple, absolute or determinable, then in trust for the infant's personal representatives, as part of the infant's personal estate ;

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—
INFANTS.
—

but the accumulations, or any part thereof, may at any time be applied as if the same were income arising in the then current year.

(6.) Where the infant's estate or interest is in an undivided share of land, the powers of this section relative to the land may be exercised jointly with persons entitled to possession of, or having power to act in relation to, the other undivided share or shares.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(8.) This section applies only where that instrument comes into operation after the commencement of this Act.

This section goes somewhat beyond what can be done by deed. The trust extends over the minority of a tenant in tail by descent, as well as the minority of a tenant in tail by purchase, which in a deed or will would be a void trust (see 1 Jarman, 274, 4th ed.) To this there is

How far this section agrees with the usual form.

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ss. 42, 43.
—
INFANTS.
—

practically no objection, as the same accumulation would take place by operation of law or under the direction of the Court in an administration action. Under subs. 5 the trust for disposal of the proceeds of accumulation is strictly confined within what could be done by deed or will.

Application
by trustees
of income of
property of
infant for
maintenance,
&c.

43.—(1.) Where any property is held by trustees in trust for an infant, either for life, or for any greater interest, and whether absolutely, or contingently on his attaining the age of twenty-one years, or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not.

Does not apply
where vesting
is after 31.

This s. does not apply to property the vesting of which is or may be postponed beyond the age of twenty-one years: *Judkins' Trusts*, 25 Ch. D. 743. In all such cases where the vesting is so postponed, maintenance, education, and accumulation clauses are still necessary.

As to the implied power of the parent or guardian to give receipts for income, see n. to s. 42 (4).

(2.) The trustees shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time on securities on which they are by the settlement, if any, or by law, authorized to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise; but so that the trustees may at any time, if they think fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

Past maintenance.

Under this and the preceding subs. trustees may apply past accumulations in payment of past maintenance: *Re Pitts' Settlement*, *Collins v. Pitts*, W. N., 1884, p. 225.

Fund vested
subject to be
divested.

Accumulations of income of property vested, but subject to be divested on death under twenty-one, have been held to be part of the infant's estate on his dying under that age: *Re Buckley's Estate*, 22

Ch. D. 583 (decided on s. 26 of 23 and 24 Vict. c. 145, the latter clause of which is the same as in this subs.). This, however, seems directly contrary to the wording of the section, which expressly gives the accumulations to the person who ultimately becomes entitled to the capital, and puts the income of a contingent fund (where it produces income) and of a vested fund on the same footing.

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For investments of trust money authorized by law, see n. to s. 42 (5), *supra*.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

A direction to accumulate the income of shares given to infants contingently on attaining twenty-one, and to pay the same to them as and when their presumptive shares become payable, is not a contrary direction excluding the operation of this section: *Re Thatcher's Trusts*, 26 Ch. D. 426. "Contrary direction."

(4.) This section applies whether that instrument comes into operation before or after the commencement of this Act.

Under s. 26 of Lord Cranworth's Act, the expression income to which such infant "may be entitled" was held to mean "may be or become entitled," so as to include income accruing on a fund to which an infant was contingently entitled (*Re Cotton*, 1 Ch. D. 232), but where no income was accruing before the contingency the section did not apply (*Re George*, 5 Ch. D. 837). The same holds good under this section of this Act: *Re Judkins' Trusts*, 25 Ch. D. 743; *Re Dickson, Hill v. Grant*, 28 Ch. D. 291, affirmed W. N., 1885, p. 53. Applies to cases only where income goes with capital.

In the case of a pecuniary legacy to an infant contingent on his attaining twenty-one, and carrying interest in the meantime, the executors are bound to set it apart and would but for this section accumulate the whole income. The effect of this section is that, in the absence of any direction to the contrary, if the infant dies under twenty-one the residuary legatee takes only the accumulations representing the residue of the income not applied under it. On the other hand if no interest is payable on the legacy till the infant attains twenty-one, there is no income to which the section can apply, and the residuary legatee takes the income of the residue without deduction till the legacy becomes vested. The short effect of the section seems capable of being stated thus: Where the income will go along with the capital if and when the capital vests, then the income is

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SS. 43, 44. applicable under the section for the benefit of the infant, otherwise not.

INFANTS.

Difference
between ss. 42
and 43.

S. 42 authorizes the application of the rents and profits of land as defined by s. 2 (ii.) for the maintenance, education, or benefit of an infant only where the instrument under which the interest of the infant arises comes into operation after 1881, but s. 43 applies to any property as defined by s. 2 (i.), whether the instrument comes into operation after 1881 or not.

RENTCHARGES AND OTHER ANNUAL SUMS.

Remedies for
recovery of
annual sums
charged on
land.

X.—RENTCHARGES AND OTHER ANNUAL SUMS.

44.—(1.) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly, or otherwise, whether charged on the land or on the income of the land, and whether by way of rentcharge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to the annual sum, the person entitled to receive the same shall have such remedies for recovering and compelling payment of the same as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.

(2.) If at any time the annual sum or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual sum and all arrears thereof, and all costs and expenses occasioned by non-payment thereof, may be fully paid.

(3.) If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise

the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by non-payment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.

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RENTCHARGES
AND OTHER
ANNUAL SUMS.

(4.) In the like case the person entitled to the annual charge, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by mortgage, or sale, or demise, for all or any part of the term, of the land charged, or of any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by nonpayment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed; and the surplus, if any, of the money raised, or of the income received, under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

(5.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(6.) This section applies only where that instrument comes into operation after the commencement of this Act.

This section gives the remedy ordinarily inserted in settlements and wills, for enforcing payment of a rentcharge, except that instead of a term, power only is given to limit a term. No more seems required, the remedy by means of a term is rarely wanted, and if wanted the term can be created. Where by reason of a lease being prior in date to the limitation of a rentcharge, or being granted under a power in a

How agrees
with usual
form.

Why a term is
necessary.

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SS. 44, 45. settlement or will which gives it priority to a rentcharge, the lessee's title is paramount to the rentcharge, the remedy by distress is not available, the lessee being only liable to pay his rent, and this rent is only payable to the reversioner. Hence the necessity for a power to create a term:

RENTCHARGES
AND OTHER
ANNUAL SUMS.

Redemption of
quit-rents and
other per-
petual charges.

45.—(1.) Where there is a quit-rent, chief-rent, rentcharge, or other annual sum issuing out of land (in this section referred to as the rent), the Copyhold Commissioners shall at any time, on the requisition of the owner of the land, or of any person interested therein, certify the amount of money in consideration whereof the rent may be redeemed.

(2.) Where the person entitled to the rent is absolutely entitled thereto in fee simple in possession, or is empowered to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, the owner of the land, or any person interested therein, may, after serving one month's notice on the person entitled to the rent, pay or tender to that person the amount certified by the Commissioners.

(3.) On proof to the Commissioners that payment or tender has been so made, they shall certify that the rent is redeemed under this Act; and that certificate shall be final and conclusive, and the land shall be thereby absolutely freed and discharged from the rent.

(4.) Every requisition under this section shall be in writing; and every certificate under this section shall be in writing, sealed with the seal of the Commissioners.

(5.) This section does not apply to tithe rentcharge, or to a rent reserved on a sale or lease, or to a rent made payable under a grant or licence for building purposes, or to any sum or payment issuing out of land not being perpetual.

(6.) This section applies to rents payable at, or created after, the commencement of this Act.

(7.) This section does not extend to Ireland.

The Copyhold Commissioners are now called the Land Commissioners for England (Settled Land Act, 1882, 45 & 46 Vict. c. 38, s. 48).

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This section gives power to an owner to purchase up certain perpetual rents issuing out of his land. It applies only where there is a person seised in fee simple of the rent, or able (as in case of trustees with a power of sale) to give a discharge for the purchase-money, or (as in case of a tenant for life) to procure under the Settled Land Act such a discharge, and will have a limited operation. There is difficulty in any other case on account of the expense of dealing with the purchase-money, generally small. Perhaps hereafter some means may be found of enabling a landowner to purchase up and extinguish all rents including tithe rentcharge.

SS. 45, 46, 47.

RENTCHARGES
AND OTHER
ANNUAL SUMS.

Difficulty in
providing for
rents of limited
owners.

The rents referred to in this section, except a perpetual rentcharge or annuity, are incidents of tenure, and would not be incumbrances within s. 5.

The entire expense of redeeming the rent necessarily falls on the person redeeming. He has to procure the certificate of the Land Commissioners as to the amount to be paid, and as to payment or tender of that amount. The person entitled to the rent has nothing to do except to receive the redemption money.

On whom
expense falls.

XI.—POWERS OF ATTORNEY.

46.—(1.) The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

POWERS OF
ATTORNEY.

Execution
under power
of attorney.

(2.) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act.

This section had especial reference to clauses which were struck out of the Bill in the House of Commons, but which are now embodied in the C. A., 1882, ss. 8 and 9.

Under this section the execution after 1881 of an instrument by an attorney in his own name will not be invalid. It is not necessary, though it is proper, to express that he executes as attorney, or on behalf of his principal, or to use words to the like effect.

47.—(1.) Any person making or doing any payment or act, in good faith, in pursuance of a power of attorney, Payment by attorney under power without

SS. 47, 48.

POWERS OF
ATTORNEY.notice of
death, &c.,
good.

shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become lunatic, of unsound mind, or bankrupt, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.

(2.) But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(3.) This section applies only to payments and acts made and done after the commencement of this Act.

As to com-
pleting
purchase under
power of
attorney under
this s.

This section is supplementary to 22 & 23 Vict. c. 35, s. 26, which applied only to trustees, executors, and administrators.

Further provision is made for powers of attorney by ss. 8 and 9 of the C. A., 1882. It is still necessary for a purchaser taking a conveyance under power of attorney not made in accordance with that Act, to ascertain that the principal is alive at the time of execution of the conveyance. But this section seems to enable the attorney to give a valid discharge for the purchase-money, so that where the contract is binding on the vendor, the purchaser would obtain a good equitable title. The legal estate would remain outstanding, but a conveyance could be obtained from the personal representatives under s. 4 or s. 30 of this Act. Notwithstanding this section, it will be best still to continue the old practice of depositing or retaining the purchase-money until it is ascertained that the vendor survived the date of execution by his attorney, unless the power can be and is made absolutely irrevocable under s. 8 of C. A., 1882, or made irrevocable for a specified period under s. 9 of that Act, and in the latter case the execution by the attorney must be within the specified period.

Deposit of
original
instruments
creating
powers of
attorney.

48.—(1.) An instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the Central Office of the Supreme Court of Judicature.

(2.) A separate file of instruments so deposited shall be kept, and any person may search that file, and inspect every instrument so deposited, and an office copy thereof shall be delivered out to him on request.

(3.) A copy of an instrument so deposited may be presented at the office, and may be stamped or marked as an office copy, and when so stamped or marked shall become and be an office copy.

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POWERS OF
ATTORNEY.

(4.) An office copy of an instrument so deposited shall without further proof be sufficient evidence of the contents of the instrument and of the deposit thereof in the Central Office.

(5.) General Rules may be made for purposes of this section, regulating the practice of the Central Office, and prescribing, with the concurrence of the Commissioners of Her Majesty's Treasury, the fees to be taken therein.

See Rule under this section, *infra*, p. 175.

(6.) This section applies to instruments creating powers of attorney executed either before or after the commencement of this Act.

Where a person upon going abroad, or for any other reason, gives a general power of attorney, there is always a difficulty in securing its production for the benefit of those whose rights depend on an exercise of the power, the original document being necessarily retained for subsequent use. Under this section the original may be deposited, and may be inspected at any time by all persons interested, and an office copy may be obtained.

XII.—CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

CONSTRUCTION
AND EFFECT
OF DEEDS AND
OTHER IN-
STRUMENTS.

49.—(1.) It is hereby declared that the use of the word "grant" is not necessary in order to convey tenements or hereditaments, corporeal or incorporeal.

Use of word
"grant" un-
necessary.

(2.) This section applies to conveyances made before or after the commencement of this Act.

Since the Act 8 & 9 Vict. c. 106, s. 2, enabled land in possession to be conveyed by grant, it has been the practice to use that word in conveyances of freehold land, though probably not necessary, if the intent to pass the estate is clear (see *Chester v. Willan*, 2 Wms. Saund. 96a (1); *Shove v. Pincke*, 5 T. R. 124). This section is intended to remove any question as to the necessity of so doing. In future the word "convey" will probably be used where convenient as to both freeholds and leaseholds (see s. 2 (v.), s. 57, and Forms in Fourth Schedule

As to necessity
for word
"grant."

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SS. 49, 50, 51.

CONSTRUCTION
AND EFFECT
OF DEEDS AND
OTHER IN-
STRUMENTS.

Conveyance by
a person to
himself, &c.

of this Act). It is not necessary to use the word "grant" except where it implies covenants under Acts of Parliament, as under s. 32 of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18).

50.—(1.) Freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person; and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person.

(2.) This section applies only to conveyances made after the commencement of this Act.

How land to be
conveyed to
tenants in
common.

The first part of this section is supplementary to 22 & 23 Vict. c. 35, s. 21 (which applies only to personal property), and is only intended to apply to a conveyance in joint tenancy, as in the ordinary case of the appointment of a new trustees. If land conveyed by A. is to be held in common by himself and B., the proper course is either for A. to convey an undivided share to B., or to convey the entirety to B. to the use of himself and B. as tenants in common. The latter form would be adopted only to make covenants run with the land.

Singular in-
cludes plural
and masculine
feminine.

It will be borne in mind in reading this and many other sections of the Act that in Acts of Parliament subsequent to 1850 the singular includes the plural, the plural the singular, and the masculine gender includes the feminine, unless the contrary is expressly provided: 13 & 14 Vict. c. 21, s. 4.

Words of
limitation in
fee or in tail.

51.—(1.) In a deed it shall be sufficient, in the limitation of an estate in fee simple, to use the words in fee simple, without the word heirs; and in the limitation of an estate in tail, to use the words in tail without the words heirs of the body; and in the limitation of an estate in tail male or in tail female, to use the words in tail male, or in tail female, as the case requires, without the words heirs male of the body, or heirs female of the body.

(2.) This section applies only to deeds executed after the commencement of this Act.

Short expres-
sion for estate
tail, &c.

See this section illustrated in the Fourth Schedule, Form IV.

The principal effect of this section is to shorten the expressions required in a deed to create estates tail and cross remainders. There still remains the distinction between deeds and wills that in a will

many expressions, such as "A. and his assigns for ever," "A. and his issue," &c., will create an estate of inheritance, but in a deed no words are sufficient except either the old technical words or the words authorized by this section.

This section applies only to deeds, therefore a surrender of copyholds should be made in the same terms according to the custom as before the Act.

52.—(1.) A person to whom any power, whether coupled with an interest or not, is given, may by deed release, or contract not to exercise, the power.

(2.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

This section removes the difficulty which arose from the indestructibility of powers simply collateral, that is powers given to a person, not taking any estate, to dispose of or charge the estate in favour of some other person (see Sug. Powers, 47, 49, 8th ed.). But a power coupled with a duty cannot be released: *Re Eyre, Eyre v. Eyre*, 49 L. T. 259, W. N., 1883, p. 153.

A married woman must acknowledge the deed of release in cases where before this Act acknowledgment was necessary to bind her interest in the subject-matter to which the power relates (Sug. Powers, 92, 8th ed.; see also *Chorley v. Lings*, L. R. 4 C. P. 374; *The Queen v. Harrald*, L. R. 7 Q. B. 361), unless she was married after 1882 or unless, if married earlier, her interest accrued after that year (M. W. P. A., 1882, ss. 2 and 5).

As to disclaimer of powers, see C. A., 1882, s. 6.

53.—(1.) A deed expressed to be supplemental to a previous deed, or directed to be read as an annex thereto, shall, as far as may be, be read and have effect as if the deed so expressed or directed were made by way of indorsement on the previous deed, or contained a full recital thereof.

(2.) This section applies to deeds executed either before or after the commencement of this Act.

The enactment in this section, though not necessary, seems required to introduce the practice of using, instead of an indorsed deed, a separate deed in a similar form referring to but not reciting the previous deed. The reference to the previous deed need only be such as clearly to identify it. For this purpose the date and the parties will in most cases be sufficient (see Fourth Schedule, Form II.). If deeds be made

SS. 51, 52, 53.

CONSTRUCTION
AND EFFECT
OF DEEDS AND
OTHER IN-
STRUMENTS.

Surrender of
copyholds to
be expressed as
heretofore.

Powers simply
collateral.

Power coupled
with a duty.

When release
by married
woman
must be
acknowledged.

Disclaimer of
powers.

Construction of
supplemental
or annexed
deed.

Practical use of
this s. 53.

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SS. 53, 54, 55, 56. up bookwise in a form now common, the supplemental deed can be attached after execution, and both together will be easily readable. A further charge cannot as a general rule be made by indorsement on the mortgage deed, which the mortgagee will not allow out of his possession, but a supplemental deed of further charge can be sent to the mortgagor for execution, and afterwards annexed by the mortgagee to his mortgage deed, without letting the latter go out of his possession.

CONSTRUCTION
AND EFFECT
OF DEEDS AND
OTHER IN-
STRUMENTS.

Any document
may be sup-
plemental.

This s. only speaks of a deed supplemental to another deed, but any document may also be made supplemental to a deed or to any other document.

Receipt in deed
sufficient.

54.—(1.) A receipt for consideration money or securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being indorsed on the deed.

(2.) This section applies only to deeds executed after the commencement of this Act.

Receipt in deed
or indorsed,
evidence for
subsequent
purchaser.

55.—(1.) A receipt for consideration money or other consideration in the body of a deed or indorsed thereon shall, in favour of a subsequent purchaser not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof.

(2.) This section applies only to deeds executed after the commencement of this Act.

Effect of receipt
in body of deed.

This and the preceding section make the receipt in the body of a deed executed after 1881, sufficient evidence of payment. Formerly that receipt was in equity little more than a mere form: see *Kennedy v. Green*, 3 My. & K. 699, 716; *Greenslade v. Dare*, 20 Beav. 284, 292.

Receipt in deed
or indorsed,
authority for
payment to
solicitor.

56.—(1.) Where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that

behalf from the person who executed or signed the deed or receipt.

(2.) This section applies only in cases where consideration is to be paid or given after the commencement of this Act.

This s. meets the dictum of L.J. Turner in *Viney v. Chaplin*, 2 De G. & J. 468, 482, making an additional document necessary where the purchase-money was to be paid to the vendor's solicitor, namely an express authority to pay to him: see also *Ex parte Swinbanks*, 11 Ch. D. 525.

It makes no alteration in the mode of the procedure on the completion of a purchase, but only gives an additional security to a purchaser. The absence of a written authority to a solicitor to receive consideration money was never relied on in practice as preventing payment. Each person entitled to receive acted as if the execution by him of the deed and indorsed receipt enabled the producer of the deed so executed to receive without further authority. This was the law as supposed to be before *Viney v. Chaplin*, and is now the law in reality. In practice it is perfectly well-known to all parties who is the solicitor acting for each person and entitled to receive; the payment will be made to him, and a purchaser knowingly making payment to the wrong person would not be absolved by this section. If any one of several persons entitled to receive chooses not to let the deed out of his possession, when executed by him, his only course is to attend on completion.

Sections 54 and 55 render unnecessary the indorsed receipt and the separate authority to pay, and prevent the difficulty and delay sometimes caused by the omission to sign an indorsed receipt. The one receipt now required may be either in the body of the deed or indorsed.

This s. does not and could not properly authorize payment by cheque instead of in cash. If, however, payment is made by cheque and accepted by the solicitor and the cheque is afterwards honoured, the purchaser will be safe. It is immaterial whether the money is paid by the purchaser's solicitor in bank notes handed to him for the purpose, or by the purchaser's banker in exchange for the purchaser's cheque. In each case the money is paid to the solicitor producing the deed, and the section applies. If the cheque is not honoured there is no payment, and the section does not apply. The only person then affected is the solicitor accepting the cheque. If he has done so without authority, he may be liable to his own client for the consequences.

Where the purchase-money is payable among several persons, the solicitor of each must arrange to attend, and, if necessary, notice may be given to the solicitor of the person making the payment not to pay unless specified persons attend to receive. In most cases this is a

S. 56.

CONSTRUCTION
AND EFFECT
OF DEEDS AND
OTHER IN-
STRUMENTS.

Practice not
altered.

Payment by
cheque.

Payment to
several in
shares.

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SS. 56, 57, 58. matter which will cause no difficulty, the old practice before *Viney v. Chaplin* being simply restored.

CONSTRUCTION AND EFFECT OF DEEDS AND OTHER IN- STRUMENTS.

Payment of
deposit by
cheque.

Payment to
trustees.

In case of large purchases payment of the deposit by cheque is a reasonable practice though the vendor sells in a fiduciary character: *Farrer v. Lacy*, 25 Ch. D. 636.

This section applies to vendors who are trustees only where they have power to authorize payment to their solicitor; it does not supply that power: *Re Bellamy and Metropolitan Board of Works*, 24 Ch. D. 387; *Re Flower and Metropolitan Board of Works*, 27 *ib.* 592. These cases seem to establish that, in the absence of an express power for the purpose, trustees may not pay or receive trust money through their solicitor, even in the ordinary course of business, though they may through a broker or other mercantile agent in the ordinary course of business: *Speight v. Gaunt*, 22 Ch. D. 727, 9 App. Cas. 1.

Sufficiency of
forms in Fourth
Schedule.

57. Deeds in the form of and using the expressions in the Forms given in the Fourth Schedule to this Act, or in the like form or using expressions to the like effect, shall, as regards form and expression in relation to the provisions of this Act, be sufficient.

The forms referred to are not in any way directory. They are merely illustrative of the modes in which the Act may be applied in practice.

Covenants to
bind heirs, &c.

58.—(1.) A covenant relating to land of inheritance, or devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his heirs and assigns, and shall have effect as if heirs and assigns were expressed.

(2.) A covenant relating to land not of inheritance, or not devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his executors, administrators and assigns, and shall have effect as if executors, administrators, and assigns were expressed.

(3.) This section applies only to covenants made after the commencement of this Act.

Benefit of real
covenants.

This section renders unnecessary the mention of "heirs and assigns," or "executors, administrators, and assigns," of the covenantee for the purpose of making the benefit of a covenant run with the land, but it does not make a covenant so run where it would not so run if the "heirs and assigns," or "executors, administrators, and assigns" were expressed.

In the case of a lease s. 10 annexes to the reversion the benefit of all the *lessee's* covenants, and so gives this benefit to "assigns" though not mentioned, and also though the covenant be not entered into with

the reversioner, as where the lessor has a mere power; and s. 11 annexes the obligation of a lessor's covenant to the reversionary estate, and so binds assigns though not mentioned where the lessor has power to bind that estate. In all other cases the obligation of a covenant relating to land is carried no further than before the Act, and to bind the "assigns" they must still be mentioned where mention was necessary before the Act, for instance, in a lease where the covenant concerns a thing not in *esse* at the time of the demise, as to build a wall (*Spencer's Case*, 1 Smith L. C. 8th ed. 68; Woodfall, L. & T. 147, 11th ed.). In cases other than those between landlord and tenant it is doubtful whether the obligation of any covenant runs with the land at law, independently of the Judicature Act, 1873 (36 & 37 Vict. c. 66, ss. 24, 25 (11)), but it does run in equity with notice, where the intention is clear that the assigns should be bound (*Tulk v. Moxhay*, 2 Ph. 774, where the assigns were mentioned; *Wilson v. Hart*, L. R. 1 Ch. Ap. 463, where the assigns were not mentioned), and the covenant is merely restrictive of the user of land (*Haywood v. Brunswick Building Society*, 8 Q. B. D. 403, 408; *London & S. W. Railway Company v. Gomm*, 20 Ch. D. 563), except where it imposes an unreasonable burden on land, as in *Keppell v. Bailey*, 2 My. & K. 517, 535. The result seems to be that it will be prudent that all covenants relating to land where the burden is intended to run with the land should be made by the covenantor for himself and his assigns.

SS. 58, 59.

CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

Cases where "assigns" must be mentioned.

Covenants not between landlord and tenant where assigns have notice.

Burden of real covenants.

59.—(1.) A covenant, and a contract under seal, and a bond or obligation under seal, though not expressed to bind the heirs, shall operate in law to bind the heirs and real estate, as well as the executors and administrators and personal estate, of the person making the same, as if heirs were expressed.

Covenants to extend to heirs, &c.

(2.) This section extends to a covenant implied by virtue of this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the terms of the covenant, contract, bond, or obligation, and to the provisions therein contained.

(4.) This section applies only to a covenant, contract, bond, or obligation made or implied after the commencement of this Act.

Though by the Act 32 & 33 Vict. c. 46, specialty debts binding the heirs rank no higher in the administration of assets than other debts against the land, there is still, under 11 Geo. 4 & 1 Will. 4, c. 47,

Priority of judgment creditor.

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SS. 59, 60.

CONSTRUCTION
AND EFFECT
OF DEEDS
AND OTHER
INSTRUMENTS.

ss. 6 and 8, the power to sue the heir or devisee personally for such debts, and obtain judgment against him to the extent of the assets which have devolved on him. Accordingly a creditor having so obtained judgment takes priority of other creditors against the land, and recovers without any necessity for probate or letters of administration, which are only required to support proceedings in an administration action. All covenants will now bind the heir or devisee so as to enable an action to be brought against him personally, though the heir is not expressly mentioned. It has always been unnecessary expressly to mention executors or administrators.

Effect of covenant with two or more jointly.

60.—(1.) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Act, imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of, any other person to whom the right to sue on the covenant, contract, bond, or obligation devolves.

(2.) This section extends to a covenant implied by virtue of this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the covenant, contract, bond, or obligation, and to the provisions therein contained.

(4.) This section applies only to a covenant, contract, bond, or obligation made or implied after the commencement of this Act.

Effect of ss. 58-60.

This section must be read in connection with ss. 58 and 59. The effect of the three last preceding sections taken together is that every covenant may now be made in the simple form: "A. hereby covenants with B. that," &c.; or "A. hereby covenants with B. and C. that," &c., except covenants relating to land the burden of which is intended to run with the land, and in such covenants, for the reasons given in the note to s. 58, A. should covenant for himself and his assigns. The covenant will thus bind the heirs, and where relating to land of any tenure the benefit of it will run with the land as if the old full form applicable to the case had been used; but where the burden is intended to run with the land the assigns of the covenantor should be mentioned. Further it will be sufficient as regards the acts to be done

under the covenant, to say "that A. will pay to B.," or "that A. will at the request of B. do all such acts," &c.; "that A. will pay to B. and C.," or "that A. will at the request of B. and C. do all such Acts," &c. Under covenants in this form the heirs or assigns of B. (in case for instance of a covenant to pay rent of freehold land to B. the lessor), or the executors or administrators of B. (as in case of a mortgage debt payable to B.) will stand precisely in the place of B. Also the survivor of B. and C., or the heirs or assigns, or the executors, administrators, or assigns of such survivor, as the case may be, will stand precisely in the place of B. and C. as if the old full form of covenant had been used. Thus not only are all covenants greatly shortened, but the form of a covenant with several persons is reduced to that of a covenant with one person. The same principle applies to any contract under seal, as, for instance, the proviso for redemption or the proviso for reduction of the rate of interest on a mortgage, and to contracts in a marriage settlement.

SS. 60, 61.

CONSTRUCTION
AND EFFECT
OF DEEDS
AND OTHER
INSTRUMENTS.

61.—(1.) Where in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account, or a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly, and not in shares, the mortgage money, or other money, or money's worth for the time being due to those persons on the mortgage or obligation, shall be deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the mortgagor or obligor; and the receipt in writing of the survivors or last survivor of them, or of the personal representatives of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

Effect of advance on joint account, &c.

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage, or obligation, or transfer, and shall have effect subject to the terms of the mortgage, or obligation, or transfer, and to the provisions therein contained.

(3.) This section applies only to a mortgage, or obliga-

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SS. 61, 62.

CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

tion, or transfer made after the commencement of this Act.

The ordinary joint account clause had two objects: (1) To rebut the presumption in equity that the money was advanced in equal shares, and to convert it into a joint advance; (2) The advance being originally joint, to enable the money, after the death of one of the persons making the advance, to be paid to the survivors or the survivor, or his representatives, without inquiry whether the joint account had been severed, the clause operating in fact as a contract that a severance (if any) should not affect the right of the survivor to give a receipt. Both these objects are effected by the present section. The section applies either where the advance is expressly stated to be on a joint account, or where the security is not expressly made to persons in shares, so that an expression of the joint account is not necessary, though it is convenient as a direct statement of the rights of the mortgagees.

Grant of easements, &c., by way of use.

62.—(1.) A conveyance of freehold land to the use that any person may have, for an estate or interest not exceeding in duration the estate conveyed in the land, any easement, right, liberty, or privilege in, or over, or with respect to that land, or any part thereof, shall operate to vest in possession in that person that easement, right, liberty, or privilege, for the estate or interest expressed to be limited to him; and he, and the persons deriving title under him, shall have, use, and enjoy the same accordingly.

(2.) This section applies only to conveyances made after the commencement of this Act.

The Statute of Uses, 27 Hen. VIII. c. 10, s. 1 (by force, as it seems, of the words, "of and in such like estates"), enabled *estates* only to be raised by way of use, and s. 5 enabled rent-charges to be raised by way of use. The statute does not contain any section applicable to the creation of other interests *de novo* (see *Beaudely v. Brook*, Cro. Jac. 189; Bac. Ab. Uses, F.), but s. 1 enabled them when created for a freehold interest to be conveyed to uses, as being hereditaments. Consequently under a conveyance to uses or under a power of sale and exchange, a right of way or other easement or liberty could not be created, but if in existence could be conveyed to uses.

No new easement can be created.

"Deriving title" means by and according to law, consequently this s. does not confer any new power of transmitting title, nor enable the creation of any new kind of easement, or make assignable that which before this Act was not by law assignable. For instance, a right of way in gross cannot be created capable of assignment: see *Ackroyd v. Smith*,

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10 C. B. 164. That there may be an "estate" in an incorporeal hereditament appears by the Statute of Uses, s. 5, which speaks of an estate in an annual rent.

SS. 62, 63, 64,
65.

CONSTRUCTION
AND EFFECT
OF DEEDS
AND OTHER
INSTRUMENTS.

Provision for
all the estate,
&c.

63.—(1.) Every conveyance shall, by virtue of this Act, be effectual to pass all the estate, right, title, interest, claim, and demand which the conveying parties respectively have in, to, or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same.

(2.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(3.) This section applies only to conveyances made after the commencement of this Act.

The object of this section is to abolish the "all estate" clause. The section does not say that every conveyance shall be deemed to contain this clause, which might be inconsistent with the terms of conveyance, as the word "conveyance" includes "lease" (see s. 2 (v.)). It merely confirms a previously existing rule of law, and applies the rule in the same cases, namely, where a contrary intention is not expressed. Even with an express "all estate" clause a lease could not pass the fee for want of the word "heirs" or "fee simple," and also because the premises would be controlled by the habendum: Co. Lit. 183 a; *Buckler's Case*, 2 Co. 55; Shep. Touch. 113.

"All estate
clause."

64.—In the construction of a covenant or proviso, or other provision, implied in a deed by virtue of this Act, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require.

Construction of
implied cove-
nants.

XIII.—LONG TERMS.

LONG TERMS.

65.—(1.) Where a residue unexpired of not less than two hundred years of a term, which, as originally created, was for not less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof, without any

Enlargement
of residue of
long term into
fee simple.

s. 65
LONG TERM.

trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term, and without any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released, or has become barred by lapse of time, or has in any other way ceased to be payable, then the term may be enlarged into a fee simple in the manner, and subject to the restrictions, in this section provided.

Presumption
of release of a
rent.

The Statute of Limitations, 8 & 4 Will. 4, c. 27, does not apply to rent reserved on a lease (*Grant v. Ellis*, 9 Mees. & Welsby, 113; Sugden, Real Prop. Stat. 36, 63, 2nd ed.), but before that Act presumption from lapse of time operated as a bar in cases where the old Act did not apply (*Doe v. Prosser*, Cowper, 217); and it is conceived that the same principle would hold now, so that after non-payment of rent for a long period it would be presumed to have been released: see *Eldridge v. Knott*, Cowper, 214.

"No money
value."

A rent which, when received, has a money value as a rent of three shillings, though it be not regularly paid, is not within this subs.: *Re Smith and Stott's Contract*, 31 W. R. 411.

(2.) Each of the following persons (namely):

(i.) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term; but, in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate use, whether with restraint on anticipation or not, and then without his concurrence;

If the married woman was married after 1882, or if her beneficial interest in the term was acquired after 1882, she holds it as her separate property, whether so expressed or not, under the M. W. P. A. 1882, ss. 2 and 5, and her husband's concurrence is not necessary.

(ii.) Any person being in receipt of income as trustee, in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not;

- (iii.) Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not; shall, as far as regards the land to which he is entitled, or in which he is interested, in right of the term, in any such character as aforesaid, have power by deed to declare to the effect that, from and after the execution of the deed, the term shall be enlarged into a fee simple.
- (3.) Thereupon, by virtue of the deed and of this Act, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term.

S. 65.

LONG TERMS.

This section enables the conversion into fee simple of a long term in a case where it is practically impossible that evidence of title to the reversion in fee could exist at the expiration of the term, at least where the reversion is not vested in a corporation, and where also if such evidence did exist the value of the reversion must be infinitesimally small at the time of conversion.

Section applies to cases where reversion has no appreciable value.

Before the Act 8 & 9 Vict. c. 106, a tortious fee, and for all practical purposes an actual fee, could be acquired by means of a feoffment: see 1 Sand. Uses, 30, 5th ed.; 2 *ib.* 14 *et seq.* But s. 4 of that Act took away the tortious effect of a feoffment, and rendered impossible the acquisition of a fee in place of a term. The usual origin of a long term is a mortgage by demise where the right of redemption has been foreclosed or has been barred by possession and lapse of time. The fact that the land is not freehold is often overlooked, complication of title arises, and the intentions of a testator are sometimes frustrated, the leasehold interest passing under a gift not intended to include it.

Old mode of acquiring fee.

The power to convert into a fee is given to "any person beneficially entitled" "to possession" (see definition of "possession," s. 2 (iii), *ante*). Thus a tenant for life, legal or equitable, and whether the land is "subject to any incumbrance or not," can effect the conversion. A trustee can only convert where the trust is active and he is in receipt of rent. Otherwise the beneficial owner is the person to convert. Thus a trustee under the usual trust for sale and conversion in a will would be the proper person to effect a conversion, but not the trustee under a settlement holding the term on trusts corresponding to the limitation of the freeholds. There the equitable tenant for life would be the proper person.

Who has power to convert.

Trustee.

A mortgagee cannot convert, as it would be improper to allow him to change the nature of his mortgagor's estate. But the mortgagor can convert, the conversion being no injury to the mortgagee.

Mortgagor but not mortgagee.

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S. 65. *The effect of subs. 3 is to defeat the reversion in fee in the same way as on a disentail, so that the fee acquired by conversion is free from all dealings affecting the original fee.

LONG TERMS. The term capable of being enlarged by this Act has been explained by the Conveyancing Act of 1882, s. 11, which enacts that

*Effect of conversion.

C. A., 1882, s. 11. Section sixty-five of the Conveyancing Act of 1881 shall apply to and include, and shall be deemed to have always applied to and included, every such term as in that section mentioned, whether having as the immediate reversion thereon the freehold or not; but not—

Amendment of enactment respecting long terms.

- (i.) Any term liable to be determined by re-entry for condition broken; or
- (ii.) Any term created by sub-demise out of a superior term, itself incapable of being enlarged into a fee simple.

It follows that if A. having a lease for 999 years at a substantial rent demised to B. for 500 years without rent, taking a fine, then neither A. under s. 65 of the Act of 1881, nor B. under s. 11 of the Act of 1882 could acquire the fee. The result would be the same if the lease for 999 years be not at a rent, but be liable to be determined by re-entry for condition broken. But if neither the lease nor the sub-lease be at a rent, nor be liable to be determined by re-entry for condition broken, then B. could acquire the fee, notwithstanding that his immediate reversion is not the freehold, and could thus defeat A.'s term. A. could also acquire the fee as being entitled to possession (which includes receipt of rents and profits (if any), s. 2 (iii.)) in right of his term (see s. 65 (2) (i.)), but having done so would be liable to have his estate defeated by the enlargement of B.'s term.

C. A., 1881, s. 65 continued. (4.) The estate in fee simple so acquired by enlargement shall be subject to all the same trusts, powers, executory limitations over, rights, and equities, and to all the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the term would have been subject to if it had not been so enlarged.

(5.) But where any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land, so as to go along with that other land as far as the law permits, and, at the time of enlargement, the ultimate beneficial interest in the term, whether subject to any subsisting particular estate or

not, has not become absolutely and indefeasibly vested in any person, then the estate in fee simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term, be liable to be and shall be conveyed and settled in like manner as the other land, being freehold land, aforesaid, and until so conveyed and settled shall devolve beneficially as if it had been so conveyed and settled.

S. 65.
LONG TERMS.

Under subs. 5, where there has been no dealing for value with the ultimate beneficial interest in the term, and that interest has not become absolutely and indefeasibly vested (as where the term has been settled in the usual way, and no tenant in tail by purchase has attained twenty-one), the land on the enlargement of the term is for all purposes of descent, devise, &c., changed from leasehold to fee simple. It will no longer vest absolutely in the first tenant in tail who attains twenty-one, but will descend under the entail if not disentailed. This result is the same as that produced where leaseholds are sold under a power of sale and the proceeds invested in fee simple land.

Where no dealing tenure is changed ;

Where there has been a conveyance for value the effect of that conveyance is preserved. Thus suppose the settlement to be on A. for life, remainder to his sons successively in tail, remainder to C. in tail, remainder to D. in fee, A. has no son of age, the term has not become absolutely and indefeasibly vested in any person, therefore the estate in fee simple acquired by enlargement should be conveyed to the uses of the settlement, and in the meantime will devolve accordingly as to the equitable interest. But C. will become absolutely entitled to the term in case A. dies without having a son who attains the age of twenty-one, or dies under that age without leaving issue inheritable ; and if C. has mortgaged this contingent interest, then the mortgagee will take the fee obtained by enlargement in the same event in which he would have taken the term, but the equity of redemption will devolve under the entail. If a son of A. attains twenty-one before the enlargement is effected, then he becomes absolutely and indefeasibly entitled to the term, and this subs. 5 does not apply, but under subs. 4 the fee acquired is subject to the same trusts as the term, that is, a trust for the son absolutely, and no disentail is required. Under a will the land will pass as freehold or leasehold, according to its tenure at the time of the testator's death.

contra where a conveyance for value.

(6.) The estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or not, include the fee simple in all mines and minerals which at the time of enlargement have not

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SS. 65, 66. been severed in right, or in fact, or have not been severed
LONG TERMS. or reserved by an inclosure Act or award.
 (7.) This section applies to every such term as afore-
said subsisting at or after the commencement of this Act.

Saves the Subs. 6 in effect gives to the owner of a fee simple obtained by
right to mines enlargement the right to the mines in fee simple as well as the land,
not vested in except in those cases where there is a possibility that the mines can be
surface owner. shewn to be vested in some other person than the reversioner in fee.

Mines severed in right (as by conveyance separately from the land)
will also be severed in fact, but the words "in fact" seem also required
to save the title of a person in possession of mines without obliging him
to shew that they have been severed in right.

Term capable The effect of this section seems to be, notwithstanding *Re Boyd's*
of enlargement *Settled Estates*, 14 Ch. D. 626, that all terms of years capable of en-
is a "real largement are now within the meaning of "real security." A purchaser
security." from the mortgagee can acquire the fee-simple and the mortgagee him-
self can acquire it after foreclosure, so that the fee simple is available
to pay, and therefore is a security for, the mortgage debt.

ADOPTION OF ACT.

Protection of
solicitor and
trustees
adopting Act.

XIV.—ADOPTION OF ACT.

66.—(1.) It is hereby declared that the powers given
by this Act to any person, and the covenants, provisions,
stipulations, and words which under this Act are to be
deemed included or implied in any instrument, or are by
this Act made applicable to any contract for sale or
other transaction, are and shall be deemed in law proper
powers, covenants, provisions, stipulations, and words, to
be given by or to be contained in any such instrument,
or to be adopted in connection with, or applied to, any
such contract or transaction; and a solicitor shall not be
deemed guilty of neglect or breach of duty, or become
in any way liable, by reason of his omitting, in good
faith in any such instrument, or in connection with any
such contract or transaction, to negative the giving,
inclusion, implication, or application of any of those
powers, covenants, provisions, stipulations, or words, or
to insert or apply any others in place thereof, in any
case where the provisions of this Act would allow of his
doing so.

(2.) But nothing in this Act shall be taken to imply

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that the insertion in any such instrument, or the adoption in connexion with or the application to, any contract or transaction, of any further or other powers, covenants, provisions, stipulations, or words is improper.

SS. 66, 67.
ADOPTION OF
ACT.

(3.) Where the solicitor is acting for trustees, executors, or other persons in a fiduciary position, those persons shall also be protected in like manner.

(4.) Where such persons are acting without a solicitor they shall also be protected in like manner.

Under this s. a solicitor adopting the Act and framing his drafts so as to incorporate the forms contained in the Act, or so as not to exclude any provisions of the Act, incurs no responsibility, those forms and provisions being by this section declared proper. The same holds as to a trustee or executor. If he uses other forms his responsibility remains the same as before the Act.

Solicitor's
responsibility
in reference to
adoption of the
Act.

Having regard to subs. 3, trustees and executors will probably always require the Act to be adopted, thereby obtaining express statutory protection.

Adoption by
trustees.

XV.—MISCELLANEOUS.

67.—(1.) Any notice required or authorized by this Act to be served shall be in writing.

MISCELLA-
NEOUS.

Regulations
respecting
notice.

(2.) Any notice required or authorized by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation without his name, or generally to the persons interested without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3.) Any notice required or authorized by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorized to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4.) Any notice required or authorized by this Act to

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- ss. 67, 68, 69. be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned through the post-office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.
- MISCELLANEOUS.
- (5.) This section does not apply to notices served in proceedings in the Court.

Service on mortgagor. As to service on mortgagor of notice to sell by mortgagee, see note to s. 20 (1), *ante*.

Short title of 5 & 6 Will. 4, c. 62. **68.** The Act described in Part II. of the First Schedule to this Act shall, by virtue of this Act, have the short title of the Statutory Declarations Act, 1835, and may be cited by that short title in any declaration made for any purpose under or by virtue of that Act, or in any other document, or in any Act of Parliament.

The object of this s. is to render unnecessary the long and cumbrous title of the Act referred to. The Form given in the schedule to that Act will now run thus: I, A. B., do solemnly . . . and by virtue of the provisions of the Statutory Declarations Act, 1835.

COURT; PRO-
CEDURE;
ORDERS.

Regulations
respecting
payments into
Court and
applications.

XVI.—COURT; PROCEDURE; ORDERS.

69.—(1.) All matters within the jurisdiction of the Court under this Act shall, subject to the Acts regulating the Court, be assigned to the Chancery Division of the Court.

(2.) Payment of money into Court shall effectually exonerate therefrom the person making the payment.

(3.) Every application to the Court shall, except where it is otherwise expressed, be by summons at Chambers.

This subs. is obligatory: *Re Lillwall's Trusts*, 30 W. R. 243, W. N. 1882, p. 6; *Patching v. Bull*, 30 W. R. 244, affirmed W. N. 1882, p. 113.

(4.) On an application by a purchaser notice shall be served in the first instance on the vendor.

- (5.) On an application by a vendor notice shall be served in the first instance on the purchaser. SS. 69, 70.
- (6.) On any application notice shall be served on such persons, if any, as the Court thinks fit. COURT; PRO-
CEDURE;
ORDERS.
- (7.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application.
- (8.) General Rules for purposes of this Act shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, and may be made accordingly. 39 & 40 Vict.
c. 59, s. 17.
- (9.) The powers of the Court may, as regards land in the County Palatine of Lancaster, be exercised also by the Court of Chancery of the County Palatine; and Rules for regulating proceedings in that Court shall be from time to time made by the Chancellor of the Duchy of Lancaster, with the advice and consent of a Judge of the High Court acting in the Chancery Division, and of the Vice-Chancellor of the County Palatine.
- (10.) General Rules, and Rules of the Court of Chancery of the County Palatine, under this Act may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act.
- 70.**—(1.) An order of the Court under any statutory or other jurisdiction shall not as against a purchaser be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice, or service, whether the purchaser has notice of any such want or not. Orders of
Court con-
clusive.
- (2.) This section shall have effect with respect to any lease, sale, or other act under the authority of the Court, and purporting to be in pursuance of the Settled Estates Act, 1877, notwithstanding the exception in section forty of that Act, or to be in pursuance of any former Act repealed by that Act, notwithstanding any exception in such former Act. 40 & 41 Vict.
c. 18, s. 40.
- (3.) This section applies to all orders made before or after the commencement of this Act, except any order

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SS. 70, 71.

COURT; PRO-
CEDURE;
ORDERS.

which has before the commencement of this Act been set aside or determined to be invalid on any ground, and except any order as regards which an action or proceeding is at the commencement of this Act pending for having it set aside or determined to be invalid.

What matters covered by this section.

This sect. has an important effect in making valid titles under sales by the Court. The order for sale is made conclusive in favour of a purchaser as to jurisdiction (for instance to sell part of a settled estate for any purpose) and as to consent (as of a respondent in a petition under the Settled Estates Act), notice, or service (as where a party to an action or a person served with notice of judgment in an action does not appear). It is also conclusive in favour of a purchaser as to dispensing with the concurrence or consent of persons entitled, whether the objection to the order appears on the face of it or not: *Hall Dore's Contract*, 21 Ch. D. 41. This case appears to decide that every order of the right Court is valid in favour of a purchaser, *ib.* 47.

How far retrospective.

Subs. 2 and 3 give this section an important retrospective effect by making valid every past lease or sale under the Settled Estates Acts of 1856 and 1877, where no proceedings have been taken to question the sale, notwithstanding that there has been in fact an omission to obtain the required consent under s. 28 of the first Act, or s. 40 of the second Act.

REPEALS.

Repeal of enactments in Part III. of Second Schedule; restriction on all repeals.

XVII.—REPEALS.

71.—(1.) The enactments described in Part III. of the Second Schedule to this Act are hereby repealed.

(2.) The repeal by this Act of any enactment shall not affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, before the commencement of this Act, or any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act; but this provision shall not be construed as qualifying the provision of this Act relating to section forty of the Settled Estates Act, 1877, or any former Act repealed by that Act.

Powers under Lord Cranworth's Act preserved.

Subs. 2 preserves to the full extent the power of sale given by Lord Cranworth's Act in case of mortgages prior to 1882. The "operation and effect" of the mortgage was under that Act to give every mort-

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gatee a power of sale unless otherwise agreed, and as a "consequence" he could sell. This "operation, effect and consequence" are not to be affected by the repeal of the Act. SS. 71, 72, 73.

REPEALS.

As to the effect of the repeals in this s., see *Quilter v. Mapleson*, 9 Q. B. D. 675, 677.

XVIII.—IRELAND.

IRELAND.

72.—(1.) In the application of this Act to Ireland the foregoing provisions shall be modified as in this section provided. Modifications
respecting
Ireland.

(2.) The Court shall be Her Majesty's High Court of Justice in Ireland.

(3.) All matters within the jurisdiction of that Court shall, subject to the Acts regulating that Court, be assigned to the Chancery Division of that Court; but General Rules under this Act may direct that any of those matters be assigned to the Land Judges of that Division.

(4.) The proper office of the Supreme Court of Judicature in Ireland shall be substituted for the central office of the Supreme Court of Judicature.

(5.) General Rules for purposes of this Act for Ireland shall be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1887, and may be made accordingly, at any time after the passing of this Act, to take effect on or after the commencement of this Act. 40 & 41 Vict.
c. 57, s. 69.

73.—(1.) Section five of the Vendor and Purchaser Act, 1874, is hereby repealed from and after the commencement of this Act, as regards cases of death there-after happening; and section seven of the Vendor and Purchaser Act, 1874, is hereby repealed as from the date at which it came into operation. Death of bare
trustee (a) in-
testate, &c.
37 & 38 Vict.
c. 78.

(2.) This section extends to Ireland only.

(a) As to the meaning of a "bare trustee," see p. 202 (a), *post*.

SCHEDULES.

THE FIRST SCHEDULE.

ACTS AFFECTED (a).

PART I.

- 1 & 2 Vict. c. 110.—An Act for abolishing arrest on mesne process in civil actions, except in certain cases; for extending the remedies of creditors against the property of debtors; and for amending the laws for the relief of insolvent debtors in England.
- 2 & 3 Vict. c. 11.—An Act for the better protection of purchasers against judgments, crown debts, lis pendens, and fiats in bankruptcy.
- 18 & 19 Vict. c. 15.—An Act for the better protection of purchasers against judgments, Crown debts, cases of lis pendens, and life annuities or rentcharges.
- 22 & 23 Vict. c. 35.—An Act to further amend the law of property and to relieve trustees.
- 23 & 24 Vict. c. 38.—An Act to further amend the law of property.
- 23 & 24 Vict. c. 115.—An Act to simplify and amend the practice as to the entry of satisfaction on Crown debts and on judgments.
- 27 & 28 Vict. c. 112.—An Act to amend the law relating to future judgments, statutes, and recognizances.
- 28 & 29 Vict. c. 104.—The Crown Suits, &c., Act, 1865.
- 31 & 32 Vict. c. 54.—The Judgments Extension Act, 1868.

(a) The Acts in Part I. of this schedule were affected only by sections of the Bill struck out in the House of Commons, and the reference to them here should also have been struck out. (*See* Preface to the first edition.) But those sections are now included in s. 2 of the Conveyancing Act of 1882.

PART II.

5 & 6 Will. 4, c. 62.—An Act to repeal an Act of the present session of Parliament, intituled “An Act for the more effectual abolition of oaths and affirmations taken and made in various Departments of the State, and to substitute declarations in lieu thereof; and for the more entire suppression of voluntary and extra-judicial oaths and affidavits;” and to make other provisions for the abolition of unnecessary oaths.

THE SECOND SCHEDULE.

REPEALS.

A description or citation of a portion of an Act is inclusive of the words, section, or other part, first or last mentioned, or otherwise referred to as forming the beginning, or as forming the end, of the portion comprised in the description or citation.

PART I.

22 & 23 Vict. c. 35, in part.	An Act to further amend the law of property and to relieve trustees Sections four to nine.	} in part; namely,—
23 & 24 Vict. c. 126, in part.	The Common Law Procedure Act, 1860 Section two.	} in part; namely,—

PART II.

15 & 16 Vict. c. 86, in part.	An Act to amend the practice and course of proceeding in the High Court of Chancery. Section forty-eight.	} in part; namely,—
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PART III.

8 & 9 Vict. c. 119.	An Act to facilitate the conveyance of real property.
23 & 24 Vict. c. 145, in part	An Act to give to trustees, mortgagees, and others certain powers now commonly inserted in settlements, mortgages, and wills
	<div style="display: flex; align-items: center;"> <div style="flex: 1;"> <p>Parts II. and III. (sections eleven to thirty) (a).</p> </div> <div style="font-size: 3em; margin: 0 10px;">}</div> <div> <p>in part; namely,—</p> </div> </div>

THE THIRD SCHEDULE.

STATUTORY MORTGAGE.

PART I.

Deed of Statutory Mortgage.

THIS INDENTURE made by way of statutory mortgage the day of 1882 between *A.* of [*&c.*] of the one part and *M.* of [*&c.*] of the other part WITNESSETH that in consideration of the sum of £ now paid to *A.* by *M.* of which sum *A.* hereby acknowledges the receipt *A.* as mortgagor and as beneficial owner hereby conveys to *M.* All that [*&c.*] To hold to and to the use of *M.* in fee simple for securing payment on the day of 1883 of the principal sum of £ as the mortgage money with interest thereon at the rate of [*four*] per centum per annum.

In witness &c.

* * * Variations in this and subsequent forms to be made, if required, for leasehold land, or other matter.

PART II.

(A.)

Deed of Statutory Transfer, Mortgagor not joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1883 between *M.* of [*&c.*] of

(a) Parts I. and IV of the Act here referred to have since been repealed by the Settled Land Act, 1882, s. 64.

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the one part and *T.* of [*&c.*] of the other part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [*&c.*] WITNESSETH that in consideration of the sum of £ now paid to *M.* by *T.* being the aggregate amount of £ mortgage money and £ interest due in respect of the said mortgage of which sum *M.* hereby acknowledges the receipt *M.* as mortgagee hereby conveys and transfers to *T.* the benefit of the said mortgage.

In witness &c.

(B.)

Deed of Statutory Transfer, a Covenantor joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1883 between *A.* of [*&c.*] of the first part *B.* of [*&c.*] of the second part and *C.* of [*&c.*] of the third part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [*&c.*] WITNESSETH that in consideration of the sum of £ now paid to *A.* by *C.* being the mortgage money due in respect of the said mortgage no interest being now due and payable thereon of which sum *A.* hereby acknowledges the receipt *A.* as mortgagee with the concurrence of *B.* who joins herein as covenantor hereby conveys and transfers to *C.* the benefit of the said mortgage.

In witness &c.

(C.)

Statutory Transfer and Statutory Mortgage combined.

THIS INDENTURE made by way of statutory transfer of mortgage and statutory mortgage the day of 1883 between *A.* of [*&c.*] of the first part *B.* of [*&c.*] of the 2nd part and *C.* of [*&c.*] of the 3rd part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [*&c.*] WHEREAS the principal sum of £ only remains due in respect of the said mortgage as the mortgage money and no interest is now due and payable thereon AND WHEREAS *B.* is seized in fee simple of the land comprised in the said mortgage subject to that mortgage NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £ now paid to *A.* by *C.* of

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which sum *A.* hereby acknowledges the receipt and *B.* hereby acknowledges the payment and receipt as aforesaid* *A.* as mortgagee hereby conveys and transfers to *C.* the benefit of the said mortgage AND THIS INDENTURE ALSO WITNESSETH that for the same consideration *A.* as mortgagee and according to his estate and by direction of *B.* hereby conveys and *B.* as beneficial owner hereby conveys and confirms to *C.* All that [*&c.*] To hold to and to the use of *C.* in fee simple for securing payment on the day of 1882 of the sum of £ as the mortgage money with interest thereon at the rate of [*four*] per centum per annum.

In witness &c.

[*Or, in case of further advance, after aforesaid at* insert and also in consideration of the further sum of £ now paid by C. to B. of which sum B. hereby acknowledges the receipt, and after of at† insert the sums of £ and £ making together*]

. Variations to be made, as required, in case of the deed being made by indorsement, or in respect of any other thing.

PART III.

Deed of Statutory Re-conveyance of Mortgage.

THIS INDENTURE made by way of statutory re-conveyance of mortgage the day of 1884 between *C.* of [*&c.*] of the one part and *B.* of [*&c.*] of the other part supplemental to an indenture made by way of statutory transfer of mortgage dated the day of 1883 and made between [*&c.*] WITNESSETH that in consideration of all principal money and interest due under that indenture having been paid of which principle and interest *C.* hereby acknowledges the receipt *C.* as mortgagee hereby conveys to *B.* all the lands and hereditaments now vested in *C.* under the said indenture To hold to and to the use of *B.* in fee simple discharged from all principal money and interest secured by and from all claims and demands under the said indenture.

In witness &c.

. Variations as noted above.

THE FOURTH SCHEDULE.

SHORT FORMS OF DEEDS.

I.—*Mortgage.*

THIS INDENTURE OF MORTGAGE made the day of 1882 between A. of [etc.] of the one part and B. of [etc.] and C. of [etc.] of the other part WITNESSETH that in consideration of the sum of £ paid to A. by B. and C. out of money belonging to them on a joint account of which sum A. hereby acknowledges the receipt A. hereby covenants with B. and C. to pay to them on the day of 1882 the sum of £ with interest thereon in the meantime at the rate of [four] per centum per annum and also as long after that day as any principal money remains due under this mortgage to pay to B. and C. interest thereon at the same rate by equal half-yearly payments on the day of and the day of AND THIS INDENTURE ALSO WITNESSETH that for the same consideration A. as beneficial owner hereby conveys to B. and C. All that [etc.] To hold to and to the use of B. and C. in fee simple subject to the proviso for redemption following (namely) that if A. or any person claiming under him shall on the day of 1882 pay to B. and C. the sum of £ and interest thereon at the rate aforesaid then B. and C. or the persons claiming under them will at the request and cost of A. or the persons claiming under him re-convey the premises to A. or the persons claiming under him AND A. hereby covenants with B. as follows [*here add covenant as to fire insurance or other special covenant required*].

In witness, &c.

II.—*Further Charge.*

THIS INDENTURE made the day of 18 between [*the same parties as the foregoing mortgage*] and supplemental to an indenture of mortgage dated the day of 18 and made between the same parties for securing the sum of £ and interest at [four] per centum per annum on property at [etc.] WITNESSETH that in consideration of the further sum of £ paid to A. by B. and C. out of money belonging to them on a joint account [*add receipt and*

covenant as in the foregoing mortgage] and further that all the property comprised in the before-mentioned indenture of mortgage shall stand charged with the payment to *B.* and *C.* of the sum of £ and the interest thereon hereinbefore covenanted to be paid as well as the sum of £ and interest secured by the same indenture.

In witness &c.

III.—*Conveyance on Sale.*

THIS INDENTURE made the day of 1883 between *A.* of [&c.] of the 1st part *B.* of [&c.] and *C.* of [&c.] of the 2nd part and *M.* of [&c.] of the 3rd part WHEREAS by an indenture dated [&c.] and made between [&c.] the lands hereinafter mentioned were conveyed by *A.* to *B.* and *C.* in fee simple by way of mortgage for securing £ and interest and by a supplemental indenture dated [&c.] and made between the same parties those lands were charged by *A.* with the payment to *B.* and *C.* of the further sum of £ and interest thereon AND WHEREAS a principal sum of £ remains due under the two before-mentioned indentures but all interest thereon has been paid as *B.* and *C.* hereby acknowledge NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £ paid by the direction of *A.* to *B.* and *C.* and of the sum of £ paid to *A.* those two sums making together the total sum of £ paid by *M.* for the purchase of the fee simple of the lands hereinafter mentioned of which sum of £ *B.* and *C.* hereby acknowledge the receipt and of which total sum of £ *A.* hereby acknowledges the payment and receipt in manner before-mentioned *B.* and *C.* as mortgagees and by the direction of *A.* as beneficial owner hereby convey and *A.* as beneficial owner hereby conveys and confirms to *M.* All that [&c.] To hold to and to the use of *M.* in fee simple discharged from all money secured by and from all claims under the before-mentioned indentures [*Add, if required,* And *A.* hereby acknowledges the right of *M.* to production of the documents of title mentioned in the Schedule hereto and to delivery of copies thereof and hereby undertakes for the safe custody thereof].

In witness &c.

[The Schedule above referred to.

To contain list of documents retained by A.]

IV.—*Marriage Settlement.*

THIS INDENTURE made the day of 1882 between *John M.* of [etc.] of the 1st part *Jane S.* of [etc.] of the 2nd part and *X.* of [etc.] and *Y.* of [etc.] of the 3rd part WITNESSETH that in consideration of the intended marriage between *John M.* and *Jane S.* *John M.* as settlor hereby conveys to *X.* and *Y.* All that [etc.] To hold to *X.* and *Y.* in fee simple to the use of *John M.* in fee simple until the marriage and after the marriage to the use of *John M.* during his life without impeachment of waste with remainder after his death to the use that *Jane S.* if she survives him may receive during the rest of her life a yearly jointure rentcharge of £ to commence from his death and to be paid by equal half-yearly payments the first thereof to be made at the end of six calendar months from his death if she is then living or if not a proportional part to be paid at her death and subject to the before-mentioned rentcharge to the use of *X.* and *Y.* for a term of five hundred years without impeachment of waste on the trusts hereinafter declared and subject thereto to the use of the first and other sons of *John M.* and *Jane S.* successively according to seniority in tail male with remainder [insert here, if thought desirable, to the use of the same first and other sons successively according to seniority in tail with remainder] to the use of all the daughters of *John M.* and *Jane S.* in equal shares as tenants in common in tail with cross remainders between them in tail with remainder to the use of *John M.* in fee simple [Insert trusts of term of 500 years for raising portions; also, if required, power to charge jointure and portions on a future marriage; also powers of sale, exchange, and partition (a), and other powers and provisions, if and as desired].

In witness &c.

(a) Powers of sale, exchange, and partition are now supplied by the Settled Land Act, 1882, and should be omitted. For the same reason, powers of enfranchisement and leasing should also be omitted.

CHAPTER IV.

THE CONVEYANCING ACT, 1882.

45 & 46 VICT. c. 39.

S. 1. *An Act for further improving the Practice of Conveyancing ;
and for other Purposes.* [10 August, 1882.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

*Preliminary.**Preliminary.*

Short titles ;
commence-
ment ; extent ;
interpretation.
44 & 45 Vict.
c. 41.

1.—(1.) This Act may be cited as the Conveyancing Act, 1882 ; and the Conveyancing and Law of Property Act, 1881 (in this Act referred to as the Conveyancing Act of 1881) and this Act may be cited together as the Conveyancing Acts, 1881, 1882.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.

What sections
retrospective.

Ss. 3-6, and s. 7, subs. 3, and s. 11 are retrospective, except in case of s. 3 as to pending actions.

(3.) This Act does not extend to Scotland.

(4.) In this Act and in the Schedule thereto—

(i.) Property includes real and personal property, and any debt, and any thing in action, and any other right or interest in the nature of property, whether in possession or not ;

- (ii.) Purchaser includes a lessee or mortgagee, or an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for property, and purchase has a meaning corresponding with that of purchaser ; SS. 1, 2.
Preliminary.
- (iii.) The Act of the session of the third and fourth years of King William the Fourth (chapter seventy-four) "for the abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance" is referred to as the Fines and Recoveries Act; and the Act of the session of the fourth and fifth years of King William the Fourth (chapter ninety-two) "for the abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance in Ireland" is referred to as the Fines and Recoveries (Ireland) Act. 3 & 4 Will. 4.
c. 74.
4 & 5 Will. 4.
c. 92.

Searches.

2.—(1.) Where any person requires, for purposes of this section, search to be made in the Central Office of the Supreme Court of Judicature for entries of judgments, deeds, or other matters or documents, whereof entries are required or allowed to be made in that office by any Act described in Part I. of the First Schedule to the Conveyancing Act of 1881, or by any other Act, he may deliver in the office a requisition in that behalf, referring to this section.

Searches.

Official negative and other certificates of searches for judgments, Crown debts, &c.

In respect to deeds this s. applies to those of which *entries* only are made, as a deed creating a rentcharge; it does not apply to deeds *enrolled* under any Act or statutory rule (see subs. 11 and note). A search would not usually be made for deeds enrolled under any Act or statutory rule. But search for disentailing deeds may in some cases be necessary: see note at the end of this s. *infra*, p. 140.

Search not usual for enrolled deeds.

For rules relating to the Central Office, see R. S. C. 1883, Or. 61.

(2.) Thereupon the proper officer shall diligently make the search required, and shall make and file in the office a certificate setting forth the result thereof; and office

s. 2.
Searches.
—

copies of that certificate shall be issued on requisition, and an office copy shall be evidence of the certificate.

(3.) In favour of a purchaser, as against persons interested under or in respect of judgments, deeds, or other matters or documents, whereof entries are required or allowed as aforesaid, the certificate according to the tenour thereof, shall be conclusive, affirmatively or negatively, as the case may be.

See definition of purchaser, s. 1 (4), (ii.).

(4.) Every requisition under this section shall be in writing, signed by the person making the same, specifying the name against which he desires search to be made, or in relation to which he requires an office copy certificate of result of search, and other sufficient particulars; and the person making any such requisition shall not be entitled to a search, or an office copy certificate, until he has satisfied the proper officer that the same is required for the purposes of this section.

(5.) General Rules shall be made for purposes of this section, prescribing forms and contents of requisitions and certificates, and regulating the practice of the office; and prescribing, with the concurrence of the Commissioners of Her Majesty's Treasury, the fees to be taken therein; which Rules shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and may be made, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

39 & 40 Vict.
c. 59.

44 & 45 Vict.
c. 68.

See the rules under this s. *infra*, pp. 174-180.

(6.) If any officer, clerk, or person employed in the office commits, or is party or privy to, any act of fraud or collusion, or is wilfully negligent, in the making of or otherwise in relation to any certificate or office copy under this section, he shall be guilty of a misdemeanour.

(7.) Nothing in this section or in any Rule made thereunder shall take away, abridge, or prejudicially

affect any right which any person may have independently of this section to make any search in the office; and every such search may be made as if this section or any such Rule had not been enacted or made.

S. 2.
Searches.
—

(8.) Where a solicitor obtains an office copy certificate of result of search under this section, he shall not be answerable in respect of any loss that may arise from error in the certificate.

(9.) Where the solicitor is acting for trustees, executors, agents, or other persons in a fiduciary position, those persons also shall not be so answerable.

(10.) Where such persons obtain such an office copy without a solicitor, they shall also be protected in like manner.

(11.) Nothing in this section applies to deeds inrolled under the Fines and Recoveries Act, or under any other Act, or under any statutory Rule. 3 & 4 Will. 4 c. 74.

(12.) This section does not extend to Ireland.

A list of the searches to be made by a purchaser will be found given in *Dart, V. and P.* vol. i. pp. 455, 456, 5th Ed. It is here only necessary to refer shortly to some of them.

Searches generally.

The search for judgments registered under 1 & 2 Vict. c. 110, and requiring to be re-registered every five years under 2 & 3 Vict. c. 11, now only applies to judgments entered up on or before 23rd July, 1860. Judgments entered up between that day and 30th July, 1864 (whether there be notice or not), do not affect a purchaser or mortgagee except upon writ issued and registered and execution levied within three calendar months after registration (23 & 24 Vict. c. 38). But the writ had to be registered in the name of the creditor, and not of the debtor (s. 2). In order, therefore, to search for writs of execution on judgments between 23rd July, 1860, and 30th July, 1864, it is necessary (1) to search for judgments against the owner between those dates, and having thus found the name of a judgment creditor (if any), then (2) to search for writs of execution in that name for three calendar months preceding the search. This search, again, is only necessary in respect of judgments entered up, before and on 29th July, 1864. Judgments entered up after that day do not under 27 & 28 Vict. c. 112, affect land of any tenure until actually delivered in execution, so that a purchaser or mortgagee, in order to protect himself against the last-mentioned judgments, has only to see that the vendor or mortgagor is in possession at the time of completion. If therefore the age of the vendor or mortgagor is such that no judgment could have

Judgments.

Writs of execution on judgments.

Registration of writs under 23 & 24 Vict. c. 38.

<p><u>s. 2.</u> <u>Searches.</u></p>	<p>been obtained against him on or before 29th July, 1864, search for judgments against him is not necessary if he is in possession. But lands may be actually delivered in execution without any registration of the writ under 27 & 28 Vict. c. 112, and in cases where there is any supposed liability to an execution the best course is to ascertain, as late as practicable before completion, whether there is any writ in the hands of the sheriff. By s. 3 of that Act, the writ is only required to be registered after the land shall have been actually delivered in execution; but this registration must be in the name of the judgment debtor, and no other or prior registration of the judgment is necessary.</p>
<p>Registration under 27 & 28 Vict. c. 112.</p>	<p>No re-registration of writs of execution is required.</p>
<p>No re-registration. Crown debts.</p>	<p>Crown debts are liable to continue in force against the debtor longer than judgments, the most common obligation to the Crown being the bond given on release of a railway deposit, but the cases must be rare in which a Crown debt before 4th June, 1839, is now subsisting so as to necessitate a search at the Exchequer office. Crown debts after that date are required to be registered (2 & 3 Vict. c. 11, s. 8); and, in order to bind purchasers, mortgagees or creditors becoming such after 31st December, 1859, to be re-registered every five years (22 & 23 Vict. c. 35, s. 22). So that for a Crown debt from 4th June, 1839, up to and including 1st November, 1865, a search for five years only is required. As to Crown debts after the latter date, the search must be for writs of execution under 28 & 29 Vict. c. 104, s. 48, but there is no three months' limit as there was in case of executions on ordinary judgments under 23 & 24 Vict. c. 38.</p>
<p>Lis pendens.</p>	<p>A <i>lis pendens</i> must be re-registered every five years (2 & 3 Vict. c. 11, s. 7), and the search should extend over that period.</p>
<p>Annuities.</p>	<p>The search for old enrolled grants of life annuities can now rarely, if ever, be necessary.</p>
<p>Disentailing deeds.</p>	<p>The search for entries of grants of life annuities or rentcharges after 26th April, 1855, registered under 18 & 19 Vict. c. 15, s. 12, should be from the commencement of the register if the person against whom search is made acquired the property and attained twenty-one before that day, but otherwise from the time when he acquired the property or the day when he attained twenty-one, whichever last happened.</p>
<p>Disentailing deeds.</p>	<p>In case of entailed property a search for enrolled deeds of disentail from the time when the tenant in tail attained twenty-one may be advisable. He may have given a security while his estate was reversionary, thereby creating a base fee, and yet the deeds might be in his possession without any default on the part of the creditor.</p>
<p>Bankruptcies.</p>	<p>The search for bankruptcies must still be made by the purchaser's solicitor until means are afforded for an official search.</p>
<p>Insolvencies. Extent of search.</p>	<p>The search for insolvencies can rarely now be necessary. The practice is to make the above searches only since the last preceding sale or mortgage, and not to search against preceding owners, it being assumed that they made proper searches and found nothing.</p>

adverse; but it may be remarked that the same practice is not generally observed in the case of searches in the Yorkshire, Middlesex, and Irish Deeds Registries.

S. 2.
Searches.

The searches for judgments, *lis pendens*, and Crown debts may be limited in each case to the period of five years back from the time of search, but they should be made in the names of all persons who were owners since the last purchase or mortgage (see *Benham v. Keane*, 1 J. & H. 685, 708) except where it is known that an owner had not attained twenty-one on 29th July, 1864.

Writs of execution on Crown debts are entered in the same register as those on judgments under 27 & 28 Vict. c. 112 (Dart, V. & P. vol. i. p. 495, 5th Ed.), and the time for search is not limited except by the commencement of the register (1st November, 1865) under 28 & 29 Vict. c. 104, and no re-registration is required, so that the search for executions must be made generally back to that date, and the certificate will include executions (if any) on ordinary judgments as well as those on Crown debts (see note to Rules, Form VI. *infra*, p. 181). It would simplify the search if separate registers were kept, the number of executions on Crown debts being no doubt comparatively small, and the search for other executions being seldom necessary.

Writs of
execution on
Crown debts.

Search for Crown debts is not necessary as regards copyholds (Dart, V. & P., p. 493, 5th Ed.)

Copyholds.

The only search necessary against trustees, or mortgagees, is for *lis pendens*. It is not necessary to make any search against mortgagees who have been paid off: see 18 & 19 Vict. c. 15, s. 11.

Trustees.
Mortgagees
who are paid
off.

Where the vendor or mortgagor has in his possession certificates of official searches they ought now to be shewn on the abstract.

Certificates of
searches to be
abstracted.

In *Procter v. Cooper* (2 Drew. 1) a purchaser making a search for judgments was held to have notice of an incumbrance which he failed to discover. The official certificate is now conclusive on all matters within this section, and the solicitor should rely on that, and not search himself.

Certificate
conclusive.

Subs. 11 excludes from the operation of this s. all enrolled deeds, the object being to make the official certificate binding only on those who make use of the office register for recording their incumbrances, and not to affect the validity of any actual conveyance upon which the title to land depends, as in case of a disentailing assurance. But a search for deeds enrolled, though so excluded, can be asked for (Form III. *post*, p. 177), and a certificate of search will be obtained (Form VII.); but it will only extend to deeds enrolled within two years, after which time enrolments of deeds and recognisances are removed to the Record Office (R.S.C. 1883, Ord. LXI. r. 13), and search must be made there by the solicitor himself. It is conceived that a solicitor will be justified in relying on an official certificate for enrolled deeds so obtained, so far as it extends, though this s. does not

Enrolled deeds.

SS. 2, 3.

Searches.Yorkshire
registries.Office copy
and certificate
of enrolment.

expressly exonerate him (a). The Court could scarcely make him answerable for an omission by its own officer.

Under the Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54, s. 20), an official return can be obtained to a search. A solicitor, trustee, &c. (s. 23), is held harmless from any error in the return, but the return is not conclusive in favour of the purchaser.

If the certificate of search discloses an enrolled deed material to the title, an office copy of the enrolment may be obtained under the 5th of the Rules under s. 2 of C. A. 1882, p. 175, *infra*. An office copy is made evidence of the enrolment by 12 & 13 Vict. c. 109, s. 19. By s. 18 of that Act a certificate of enrolment is authorised to be endorsed on every enrolled deed certifying the day of enrolment, and when sealed and stamped with the seal of the Enrolment Office, is evidence that the deed was enrolled on the day mentioned in the certificate.

Notice.Restriction on
constructive
notice.Notice.

3.—(1.) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing, unless—

- (i.) It is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or
- (ii.) In the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor, or other agent, as such, or would have come to the knowledge of his solicitor, or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

Subs. (ii.) prevents constructive notice under such circumstances as those in *Hargreaves v. Rothwell*, 1 Keen. 160. A purchaser cannot avoid constructive notice by omitting to investigate the title, even though the law under an open contract precludes investigation (*Patman*

(a) The bill as originally framed exonerated the solicitor, but did not make the certificate conclusive against persons deriving title under an enrolled deed. In the amendments made during the progress of the bill this exoneration appears to have been lost sight of.

v. *Harland*, 17 Ch. D. 353). Under subs. (ii.) there will be the same equitable remedy by injunction as before the Act.

SS. 3, 4, 5.

Notice.

(2.) This section shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been enacted.

(3.) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.

(4.) This section applies to purchases made either before or after the commencement of this Act; save that, where an action is pending at the commencement of this Act, the rights of the parties shall not be affected by this section.

Leases.

4.—(1.) Where a lease is made under a power contained in a settlement, will, Act of Parliament, or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease.

Leases.
Contract for lease not part of title to lease.

(2.) This section applies to leases made either before or after the commencement of this Act.

The effect of this s. is merely to prevent a purchaser of the lease after it is granted, requiring as part of his title an abstract and production of the contract under which it was granted; thus placing the contract in the same position as a document shewing the freeholder's title under V. & P. A. s. 2.

Effect of s. 4.

Separate Trustees.

5.—(1.) On an appointment of new trustees, a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to

Separate Trustees.
Appointment of separate sets of trustees.

S. 6, 7.Separate
Trustees.

any other part or parts of the trust property; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part.

(2.) This section applies to trusts created either before or after the commencement of this Act.

This s. applies
to any ap-
pointment.

Plural includes singular, so that the words "on appointment of new trustees" include an appointment of one new trustee, and the appointment need not be an appointment of trustees for the whole of the funds: *Re Paine's Trusts*, W. N. 1885, p. 42. The case contemplated by the s. is an appointment of a new trustee for one fund, and if a new trustee can be appointed for that one, it necessarily follows that the old trustee retires from that one. A power to retire is never expressly given where the retirement is consequent on a new appointment.

The Court has appointed separate sets of trustees for distinct trusts, on petition under the Trustee Acts (see *Re Cotterill's Trusts*, W. N. 1869, p. 183; *Lewin on Trusts*, 865 n., 6th Ed.)

It is conceived that this s. applies where a set of distinct trusts are for the time being in force as to a fund, though there may be an ultimate limitation over by reference to the trusts of some other fund. The reference is merely to save repetition, and does not make the two funds into one, though in certain cases there will be no duplication of charges: see *Hindle v. Taylor*, 5 D. M. & G. 577; *Cooper v. Macdonald*, L. R. 16 Eq. 258.

Powers.

Disclaimer of
power by
trustees.

Powers.

6.—(1.) A person to whom any power, whether coupled with an interest or not, is given, may, by deed, disclaim the power; and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power.

(2.) On such disclaimer, the power may be exercised by the other or others, or the survivors or survivor of the others, of the persons to whom the power is given, unless the contrary is expressed in the instrument creating the power.

(3.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

Disclaimer of
powers.

C. A. s. 52 enables the release of a power whether coupled with an interest or not (unless it is coupled with a duty), thereby extinguishing it, so that several trustees concurring can absolutely preclude themselves from ever exercising the power, but it does not enable one trustee

alone to disclaim as he could disclaim a trust estate, so as to vest the power in the other trustees. This s. puts disclaimer of a power on the same footing as disclaimer of an estate (see Sugd. Powers, p. 50, 8th Ed.)

SS. 6, 7.

Powers.

Married Women.

7.—(1.) In section seventy-nine of the Fines and Recoveries Act, and section seventy of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the words "two of the perpetual commissioners, or two special commissioners," the words "one of the perpetual commissioners, or one special commissioner;" and in section eighty-three of the Fines and Recoveries Act, and section seventy-four of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the word "persons" the word "person," and for the word "commissioners" the words "a commissioner;" and all other provisions of those Acts, and all other enactments having reference in any manner to the sections aforesaid, shall be read and have effect accordingly.

*Married
Women.*

Acknowledg-
ment of deeds
by married
women.

(2.) Where the memorandum of acknowledgment by a married woman of a deed purports to be signed by a person authorised to take the acknowledgment, the deed shall, as regards the execution thereof by the married woman, take effect at the time of acknowledgment, and shall be conclusively taken to have been duly acknowledged.

S. 84 of the English Fines and Recoveries Act as it now stands, consequent on this repeal, will be found at p. 152, *infra*. The new form of memorandum is given in the rules, *infra*, p. 173.

The effect of this section is:

Effect of s. 7

1. To substitute one perpetual or special commissioner in place of two.
2. To make a memorandum of acknowledgment indorsed on the deed sufficient, without any separate certificate to be filed.

But under the M. W. P. A. every woman married after 1882, and every other married woman, as to property acquired after that year, is in the position of a *feme sole*, and can convey without any acknowledgment.

and of
M. W. P. A.

S. 7.

Married
Women.39 & 40 Vict.
c. 59.44 & 45 Vict.
c. 68.40 & 41 Vict.
c. 57.

(3.) A deed acknowledged before or after the commencement of this Act by a married woman, before a judge of the High Court of justice in England or Ireland, or before a judge of a county court in England, or before a chairman in Ireland, or before a perpetual commissioner or a special commissioner, shall not be impeached or impeachable by reason only that such judge, chairman, or commissioner was interested or concerned either as a party, or as solicitor, or clerk to the solicitor for one of the parties, or otherwise, in the transaction giving occasion for the acknowledgment; and General Rules shall be made for preventing any person interested or concerned as aforesaid from taking an acknowledgment; but no such Rule shall make invalid any acknowledgment; and those Rules shall, as regards England, be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and shall, as regards Ireland, be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, for England and Ireland respectively, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

See rules under this s., *infra*, pp. 172-174.

(4.) The enactments described in the Schedule to this Act are hereby repealed.

(5.) The foregoing provisions of this section, including the repeal therein, apply only to the execution of deeds by married women after the commencement of this Act.

(6.) Notwithstanding the repeal or any other thing in this section, the certificate, if not lodged before the commencement of this Act, of the taking of an acknowledgment by a married woman of a deed executed before the commencement of this Act, with any affidavit relating thereto, shall be lodged, examined, and filed in the like manner, and with the like effects and consequences as if this section had not been enacted.

(7.) There shall continue to be kept in the proper office of the Supreme Court of Judicature an index to all certificates of acknowledgments of deeds by married women lodged therein, before or after the commencement of this Act, containing the names of the married women and their husbands, alphabetically arranged, and the dates of the certificates and of the deeds to which they respectively relate, and other particulars found convenient; and every such certificate lodged after the commencement of this Act shall be entered in the index as soon as may be after the certificate is filed.

SS. 7, 8.

*Married
Women.*

(8.) An office copy of any such certificate filed before or after the commencement of this Act shall be delivered to any person applying for the same; and every such office copy shall be received as evidence of the acknowledgment of the deed to which the certificate refers.

See form of requisition for an official search for certificates of acknowledgments, *infra*, p. 179.

Subs. 3 applies to deeds *acknowledged* before or after 1882, and subs. 5 applies to the *execution* of deeds after 1882. So far as regards the interest of the person since the Act, or either of the persons before the Act taking an acknowledgment, the deed is unimpeachable, whether executed before or after 1882. But so far as regards the manner of acknowledgment, the Act applies only to deeds executed after 1882.

Certificates lodged after the commencement of the Act and referred to in subs. 6, necessarily mean the certificates of acknowledgments taken but not lodged before the Act. An index of certificates of acknowledgment has still to be kept, to enable searches in regard to deeds executed before the Act.

Powers of Attorney.

8.—(1.) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser—

Powers of Attorney.

Effect of power
of attorney, for
value, made
absolutely
irrevocable.

- (i.) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

SS. 8, 9.

*Powers of
Attorney.*

(ii.) Any Act done at any time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and

(iii.) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Powers of
attorney given
for value.

This section relates only to powers of attorney given for value, and enables a power of that kind to take the place of an actual transfer, but it is conceived that the attorney must be a person named, and that the power lapses by his death. He may, however, be empowered to appoint substitutes. A person desiring to give a security may, in consideration of the loan, give an irrevocable power to transfer, or convey, or sell, thus enabling the lender to realise his security, if he so require. When the loan is repaid the power may be cancelled, and a transfer and re-transfer are thus avoided. The person taking the power must use all the same precautions as if he had taken an actual transfer, so as to prevent another transferee taking without notice. In the case of land, for instance, he must obtain the deeds.

Effect of power
of attorney,
for value or
not, made
irrevocable for
fixed time.

9.—(1.) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser,—

(i.) The power shall not be revoked, for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage,

lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

- (ii.) Any act done within that fixed time, by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and

- (iii.) Neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power within that fixed time.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

S. 9
Powers of
Attorney.

This section includes powers of attorney not given for value, as, for instance, where a person going abroad desires to give a power to sell property. The main difficulty hitherto has been that in order to make a complete title it was necessary to ascertain that the principal was living when the transfer under the power was made. In order to avoid this, the only course was to make an actual transfer on trust for sale. If no sale was made, a re-transfer became necessary, thus in the case of land putting two deeds in the title. This section is supplementary to C. A. ss. 46, 47, *ante*, p. 105.

Power of
attorney not
given for value.

Though not necessary since the C. A. s. 46, it is usual and proper that the attorney should sign the principal's name and express the deed to be signed, sealed, and delivered by the attorney, naming him. The principal is named and described amongst the parties as if he himself executed, and no other reference is made to the attorney or the power, except in the signature and attestation clause (see as to execution by an attorney, *Coombes's Case*, 9 Co. Rep. 77; *Frontin v. Small*, 2 Lord Raym. 1418; *Wilks v. Back*, 2 East, 142; see also *Lawrie v. Lees*, 14 Ch. D. 249, 7 App. Cas. 19, where, though the attorneys executed in their own names, the inference was that they did so on behalf of their principal: 7 App. Cas. 28, per Lord Penzance).

Execution by
attorney.

SS. 10, 11.

*Executory
Limitation.*Restriction on
executory
limitations.*Executory Limitations.*

10.—(1.) Where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for a term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect.

(2.) This section applies only where the executory limitation is contained in an instrument coming into operation after the commencement of this Act.

Executory
limitations
assimilated to
strict settle-
ment.

An executory limitation generally prevented alienation for a longer period than an ordinary strict settlement. Thus under a devise "to A. in fee simple, and if he die without issue living at his death, to B. in fee simple," with further limitations over of the same kind, it was necessary that all the persons named should concur in a sale, whereas in case of an ordinary strict settlement on the several persons named and their issue, A. with his son, when of age, can bar the entail and sell. This section enables A. alone to sell when any child or other issue of his attains twenty-one, the limitations over becoming barred in the same event in which the entail under a strict settlement could be barred. The section gives no estate to the issue, but simply gives A. in his lifetime, when a child or other issue of his attains twenty-one, the same complete power of disposition as independently of the Act he would acquire at his death if a child or other issue of his were then living.

The section only applies to an estate in fee or for life, or a term of years absolute or determinable with life.

*Long terms.**Long Terms.*Amendment of
enactment
respecting long
terms.

11. Section sixty-five of the Conveyancing Act of 1881 shall apply to and include, and shall be deemed to have always applied to and included, every such term as in that section mentioned, whether having as the immediate reversion thereon the freehold or not; but not—

- (i.) Any term liable to be determined by re-entry for condition broken ; or SS. 11, 12, 13.
Long Terms.
- (ii.) Any term created by sub-demise out of a superior term, itself incapable of being enlarged into a fee simple.

See note to C. A. s. 65, p. 120, *supra*.

Mortgages.

Mortgages.

12. The right of the mortgagor, under section fifteen of the Conveyancing Act of 1881, to require a mortgagee, instead of re-conveying, to assign the mortgage debt and convey the mortgaged property to a third person, shall belong to and be capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance ; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer.

*Reconveyance
on mortgage.*

See note to C. A. s. 15, p. 58, *supra*.

Saving.

Saving.

13. The repeal by this Act of any enactment shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act ; nor shall the same affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, before the commencement of this Act ; nor shall the same affect any action, proceeding, or thing then pending or uncompleted ; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act.

*Restriction on
repeals in this
Act.*

SCHEDULE.

REPEALS.

Section 7 (4.)

3 & 4 Will. 4, c. 74. in part.	<p>The Fines and Recoveries Act . . . } in part; namely,—</p> <p>Section eighty-four, from and including the words “and the same judge,” to the end of that section.</p> <p>Sections eighty-five to eighty-eight inclusive.</p>
4 & 5 Will. 4, c. 92. in part.	<p>The Fines and Recoveries (Ireland) Act . . . } in part; namely,—</p> <p>Section seventy-five, from and including the words “and the same judge,” to the end of that section.</p> <p>Sections seventy-six to seventy-nine inclusive.</p>
17 & 18 Vict. c. 75.	An Act to remove doubts concerning the due acknowledgments of deeds by married women in certain cases.
41 & 42 Vict. c. 23.	The Acknowledgment of Deeds by Married Women (Ireland) Act, 1878.

The 84th section of the English Fines and Recoveries Act as it now stands, consequent on the above repeal, is as follows:—

LXXXIV. When a married woman shall acknowledge any such deed as aforesaid, the Judge, Master in Chancery, or Commissioner taking such acknowledgment shall sign a memorandum, to be indorsed on or written at the foot or in the margin of such deed, which memorandum, subject to any alteration which may from time to time be directed by the Court of Common Pleas, shall be to the following effect; *videlicet* [the form to be now used is given in the Rules under the Fines and Recoveries Act, and s. 7 of C. A., 1882, p. 173, *post*].

CHAPTER V.

MARRIED WOMEN'S PROPERTY ACT, 1882.

45 & 46 VICT. c. 75.

An Act to consolidate and amend the Acts relating to the Property of Married Women. [18th August 1882.]

S. 1.

WHEREAS it is expedient to consolidate and amend the Act of the thirty-third, and thirty-fourth Victoria, chapter ninety-three, intituled "The Married Women's Property Act, 1870," and the Act of the thirty-seventh and thirty-eighth Victoria, Chapter fifty, intituled "An Act to amend the Married Women's Property Act (1870)":

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

See general observations on this Act, Chap. I., s. 2, *supra*.

1.—(1.) A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a feme sole, without the intervention of any trustee.

Married woman to be capable of holding property and of contracting as a feme sole.

The whole effect of this section appears to be contained in the words "feme sole" and "without the intervention of a trustee." Before the Act it was competent for a married woman to "acquire, hold, and dispose of" property, but she was not entirely in the same position as a *feme sole*, and the intervention of a trustee was necessary to prevent the legal estate or right vesting in her husband, and to enable it to pass without an acknowledged deed. The words "separate property" seem used, not as referable to separate use, but in the same way as a member of a partnership may be said to be entitled to certain property

S. 1.
—

as his "separate property," as distinguished from partnership property. This subs., taken by itself, is merely enabling; it does not say whether, in order to enable a married woman to take separate property it must be expressly given to her as such, in the same manner as formerly in case of property given for her separate use. This, however, appears provided for by s. 2 as to a woman married after 1882, and by s. 5 as to a woman married before 1883, in respect to property acquired after 1882. Under these sections she is "entitled to have and to hold, and to dispose of in manner aforesaid, as her separate property," so that an absolute separate title is thereby created, and it seems quite independent of the terms of gift, so that it is not now legally possible to create the old status as to property between husband and wife (see *ante*, pp. 6-9).

Applies only
to property
acquired after
1882:

and during
coverture only
qu.

This section applies to property of a woman married before 1883 only where it was acquired after 1882: *Re Harris' Settled Estates*, 28 Ch. D. 171. Also Pearson, J., has held that it is confined in its operation to property acquired during the coverture, and consequently a will made or republished during widowhood is necessary in order to dispose of property acquired during widowhood: *Re Price, Stafford v. Stafford*, W. N. 1885, p. 32. This decision seems open to some question. The enactment is that a married woman shall be capable of disposing by will or otherwise of "any real or personal property" as her separate property. By ss. 2 and 5 separate property is defined so as to include *all* property devolving *after* marriage, or in case of a woman married before 1883 all property devolving after 1882. There is no restriction that it must be acquired during the coverture. The will of a married woman like any other will speaks from her death, and would exercise an ordinary power of disposition, and dispose of property settled to her separate use, though she be a widow at her death (Farwell on Powers, p. 93) or though the power did not exist at the date of the will (*Thomas v. Jones* 1 De G. J. & S. 80.) The power given by the act seems equally extensive.

Trust
property.

Though, as will be subsequently shewn, the wording of s. 18 is rather deficient, it seems reasonably clear that this subs. and ss. 2 and 5 include all trust property. The words are in strictness only applicable to property of which she is beneficial owner, but as she is liable separately on contract or in tort, and her husband need not be a party to any action (subs. 2.), the same reasoning applies as in *Bathe v. Bank of England*, 4 K. & J. 564.

(2.) A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort or otherwise, in all respects as if she were a feme sole, and her husband need not be joined with her as plaintiff or

defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise.

S. 1.

Under this subs. a married woman may sue alone for a tort committed before the commencement of the Act (*Weldon v. Winslow* 13 Q. B. D. 784), and for a trespass on a house occupied by her (*Weldon v. De Bathe*, 14 Q. B. D. 339), and may petition alone (*Re Outwin's Trusts*, 31 W. R. 374), and is not liable to give security for costs (*Threlfall v. Wilson*, 8 P. D. 18; *Severance v. Civil Service Supply Association*, 48 L. T. 485).

Married woman may sue and petition alone.

may sue, &c. as a single woman.

It seems to follow from *Stafford v. Stafford*, above referred to, that the contract of a married woman made during coverture cannot be enforced against her as widow, except in respect to property belonging to her during the coverture, and cannot be enforced against her property acquired during widowhood. It seems also doubtful whether she can sue as widow in respect of a contract or tort during coverture. By her husband's death she passes from the condition of a statutory *feme sole* to that of a common-law *feme sole*; her statutory privileges and liabilities are, if the decision in *Stafford v. Stafford* be correct, distinct from her common law rights, and are not available in respect to matters solely governed by the common law.

Enforcement, when discovery, of contract during coverture.

(3.) Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown.

This subs. is not retrospective, *Conolan v. Leyland*, 27 Ch. D. 632.

Not retrospective.

(4.) Every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire.

This subs. is not retrospective; *Conolan v. Leyland*, 27 Ch. D. 632. It renders obsolete the decision in *Pike v. Fitzgibbon*, 17 Ch. D. 454, that the contract of a married woman bound so much only of her separate estate not subject to restraint on anticipation as existed at

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SS. 1, 2, 3.

the date of the contract, and remained when judgment was enforced. But it does not make a contract by a married woman binding on any property which she is restrained from anticipating: see s. 19, *post*.

As to the definitions of "contract" and "property," see s. 24, *post*.

(5.) Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a *feme sole*.

There seems no reason now why a married woman should not be a partner in trade with her husband. If so, does she carry on trade separately from him? Also, if she does not carry on trade, is she subject to the bankrupt laws in the same manner as any other non-trader? It is conceived that this sub. is not restrictive, and that as a *feme sole* in respect to her property, she must be subject to the same laws and liabilities as an actual *feme sole*.

Form of final judgment against married woman.

Property of a woman married after the Act to be held by her as a *feme sole*.

As to the form of a final judgment against a married woman in respect of her separate estate: see *Bursill v. Tanner*, 13 Q. B. D. 691.

2.—Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property and to dispose of in manner aforesaid all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation, in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

Accordingly the examination of a woman married since 1882, as to her consent under the Settled Estates Act, 1877, s. 50, is not necessary: *Riddell v. Errington*, 26 Ch. D. 220.

Loans by wife to husband.

3. Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of

the other creditors of the husband for valuable consideration in money or money's worth have been satisfied. SS. 3, 4, 5.

4. The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under this Act. Execution of general power.

5. Every woman married before the commencement of this Act shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act, including any wages, earnings, money, and property so gained or acquired by her as aforesaid. Property acquired after the Act by a woman married before the Act to be held by her as a *feme sole*.

In *Baynton v. Collins*, 27 Ch. D. 604 (where the question was not as to a contested right to property, but merely whether married women should be separately examined) Chitty, J., considered that this section includes property coming into possession after the commencement of the Act though the title accrued before. He relied on the words "whether vested or contingent and whether in possession, reversion or remainder." The learned Judge said: "Five different kinds of title were mentioned, and if any one of them accrues after the commencement of the Act, then sect. 5 will apply." But it is submitted that this construction reduces to silence four of the five kinds of title, and treats the sect. as using only the words, "property which shall accrue in possession after." The express inclusion of property, the title to which in reversion accrues after 1882, excludes by necessary implication similar titles which accrued previously; otherwise, the result is, that though a right in possession accruing after 1883 covers every reversionary title whenever arising, yet sect. 5 includes by express words a reversionary title arising after 1882, but does not include, except generally under the words "title in possession," a reversionary title arising before 1883, notwithstanding that this latter title, the inclusion of which defeats vested rights, most requires distinct evidence of an intention to include it. *Baynton v. Collins* has, however, been followed, though not assented to, in *Re Thompson and Curzon*, W. N. 1885, p. 60, and *Re Hughes*, *ib.* p. 62. When title is to accrue.

Where there was any contingent interest before 1883 which afterwards ripened into possession, it is submitted that the old law applies. See *Atcherley v. Du Moulin*, 2 K. & J. 186; *Dering v. Kynaston*, L. R. 6 Eq. 210; and *Re Jones' Will*, 2 Ch. D. 362, as to contingent interests not falling within covenants to settle other property of the wife: and see *contra*, *Cornmell v. Keith*, 3 Ch. D. 767. Interests contingent before 1883.

SS. 5 6.

Will before the
Act of testator
dying after.

The construction of a will made before the Act is not affected, so that a gift therein to husband and wife and a third person gives the husband and wife a moiety only, though the testator dies after the commencement of the Act: *Re March, Mander v. Harris*, 27 Ch. D. 166. Whether the result would be the same under a will made after the commencement of the Act remains to be decided.

As to stock,
&c., to which
a married
woman is
entitled.

6. All deposits in any post office or other savings bank, or in any other bank, all annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, and all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England, or of any other bank, which at the commencement of this Act are standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock, or other interests of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society, which at the commencement of this Act are standing in her name, shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and the fact that any such deposit, annuity, sum forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England or of any other bank, share, stock, debenture, debenture stock, or other interest as aforesaid, is standing in the sole name of a married woman shall be sufficient *prima facie* evidence that she is beneficially entitled thereto for her separate use, so as to authorise and empower her to receive or transfer the same and to receive the dividends, interests, and profits thereof, without the concurrence of her husband, and to indemnify the Postmaster General, the Commissioners for the Reduction of the National Debt, the Governor and Company of the Bank of England, the Governor and Company of the Bank of Ireland, and all directors, managers, and trustees of every such bank, corporation, company, public body, or society as aforesaid, in respect thereof.

This section applies to funds in the sole name of a married woman at the commencement of the Act, although "name," and not "sole name," occurs in the 14th line. The next section applies to those subsequently transferred to her sole name. The words "beneficially entitled" appear to exclude the case of trust property, which, however, seems supplied by s. 18.

SS. 6, 7.

This section uses the old expressions "separate property as a married woman," and "separate use," but nothing seems to arise thereon. The words "separate use" and "separate property as a married woman" seem to be used as equivalent expressions (see first note to s. 1 (1), *ante*). In the next section "separate property" is again used. It is presumed they mean the same thing as "separate property as a feme sole," the general effect of the Act being to abolish all the old relationship as to property between husband and wife, and leave no application for the doctrine of separate use (see *ante*, p. 6).

7. All sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, and all such deposits and annuities respectively as are mentioned in the last preceding section, and all shares stock, debentures, debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which after the commencement of this Act shall be allotted to or placed, registered, or transferred in or into or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her separate property, in respect of which so far as any liability may be incident thereto her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded, or not.

As to stock, &c., to be transferred, &c., to a married woman.

Provided always, that nothing in this Act shall require or authorize any corporation or joint stock company to admit any married woman to be a holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any Act of Parliament, charter, byelaw, articles of association, or deed of settlement regulating such corporation or company.

SS. 7, 8, 9.

This section does not contain the words "beneficially entitled," and appears, therefore, to include trust property. See note to last section.

Investments in joint names of married women and others.

8. All the provisions herein-before contained as to deposits in any post office or other savings bank, or in any other bank, annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, shares, stock, debentures, debenture stock, or other interests of or in any such corporation, company, public body, or society as aforesaid respectively, which at the commencement of this Act shall be standing in the sole name of a married woman, or which, after that time, shall be allotted to, or placed, registered, or transferred to or into, or made to stand in, the sole name of a married woman, shall respectively extend and apply, so far as relates to the estate, right, title, or interest of the married woman, to any of the particulars aforesaid which, at the commencement of this Act, or at any time afterwards, shall be standing in or shall be allotted to, placed, registered, or transferred to or into, or made to stand in, the name of any married woman jointly with any persons or person other than her husband.

This section appears not to include trust property standing in the names of a married woman jointly with any persons or person other than her husband, at the commencement of the Act, but does include trust property subsequently transferred to her jointly with any persons or person other than her husband (see notes to last two sections).

As to stock, &c., standing in the joint names of a married woman and others.

9. It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society as aforesaid, which is now or shall at any time hereafter be standing in the sole name of any married woman, or in the joint names of

such married woman and any other person or persons not being her husband. SS. 9, 10, 11.

10. If any investment in any such deposit or annuity as aforesaid, or in any of the public stocks or funds, or in any other stocks or funds transferable as aforesaid, or in any share, stock, debenture, or debenture stock of any corporation, company, or public body, municipal, commercial, or otherwise, or in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit, building, or loan society, shall have been made by a married woman by means of moneys of her husband, without his consent, the Court may, upon an application under section seventeen of this Act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in this Act contained shall give validity as against creditors of the husband to any gift, by a husband to his wife, of any property, which, after such gift, shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any moneys so deposited or invested may be followed as if this Act had not passed.

Fraudulent investments with money of husband.

11. A married woman may by virtue of the power of making contracts herein-before contained effect a policy upon her own life or the life of her husband for her separate use; and the same and all benefit thereof shall enure accordingly.

Moneys payable under policy of assurance not to form part of estate of the insured.

A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the

- S. 11. estate of the insured, or be subject to his or her debts: Provided, that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid. The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid. If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by any Court having jurisdiction under the provisions of the Trustee Act, 1850, or the Acts amending and extending the same. The receipt of a trustee or trustees duly appointed, or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.

13 & 14 Vict.
c. 60.

Points arising
on s. 11.

Policy effected
by married
woman.

When interests
vest under.

The following points seem to arise on this section, and may, it is conceived, be answered or explained as follows:—

1. A policy effected by a married woman remains her separate property if the objects in whose favour it is effected fail, and can be disposed of by her as a *feme sole* (see ss. 1, 24).

2. If the policy is effected by a man for the benefit of his wife and children, or by a woman for the benefit of her husband and children, the beneficiaries acquire at the time or in the event specified in the policy, vested interests in like manner as in case of an ordinary policy effected and assigned to trustees on trust. If the wife or husband is to take a life interest only, it should be so expressed: see *Re Adam's*

Policy Trusts, 23 Ch. D. 529. If the policy is effected by a man for the benefit of his wife alone it should be expressed that she shall take only in case she survives him, as otherwise the money will be her separate property, and the right to it will, on her death before him, devolve under her will.

S. 11.

How policy for benefit of wife should be expressed.

3. The power to effect a policy is not it seems, as in the Act of 1870, confined to a married man or woman. An unmarried man or woman may under this section effect a policy for any future wife or husband and children.

Policies effected under this s. by unmarried persons.

4. Children only and not issue generally are within the section.

Issue other than children not within this s.

5. The policy under this section is in effect a complete settlement of personalty incapable of being defeated by the person making it though there be no wife or children in existence. Nor can the insured surrender the policy.

Effect of this s. on policy.

6. In the absence of wife or husband or child capable of taking under the trusts, the policy is part of the estate of the insured, and would pass to his or her trustee in bankruptcy. A general power to surrender should not be reserved. If it were reserved, or could be implied, it could be exercised by the trustee in bankruptcy and thus defeat the settlement. The only power reserved (if any) should be to apply bonuses in reduction of premiums, or to surrender in exchange for a policy of smaller amount at a reduced premium, or with all premiums paid up.

7. Though this section does not, like the Act of 1870, say that wife and children are under the policy to take "according to the interest expressed," yet the trusts of the policy money may, it is conceived, be moulded in any way the insured desires for the benefit of wife and children.

8. The words "in default of notice to the insurance office" mean in default of notice of appointment of trustees of the policy money. But during the insured's life where there are no trustees, notices of assignments and charges must, it is conceived, be given to the office, there being no one else to receive them, and the office must record and acknowledge them as in case of an ordinary policy. No other notice seems possible. Nevertheless the office may pay the money to the trustees thereof when appointed, or, if none, to the insured's personal representatives, but should in each case hand over copies of the notices.

Notice.

9. Assuming the policy to have no money value, no settlement stamp beyond 10s. is payable, there being no provision made for keeping up the policy (see 33 & 34 Vict. c. 97, s. 124).

Stamp.

10. The section does not expressly authorise the appointment of trustees of the policy, but only trustees of the money payable under the policy. If no trustee is appointed, the policy being in the name of the insured vests in him, which appears unavoidable, there being no provision in the Act vesting it in any other person.

In whom policy vests.

SS. 11, 12,
—

11. If trustees are appointed it is not stated that the policy is to vest in them, but their receipts are made a discharge for the policy money, consequently under the Policies of Assurance Act, 1867 (30 & 31 Vict. c. 144) they have a legal right to sue on the policy, if notice is given according to s. 3 of that Act, and this seems in effect to vest the policy in them in the same manner as an assignment on trust.

12. If the policy names trustees it does not seem necessary to the effectual appointment of such trustees that the insured should sign the policy, but he or she must sign any separate writing appointing trustees.

General effect
of this s.

13. Having regard to the other provisions of the Act, the effect of this section seems to be only to render unnecessary a deed assigning the policy to trustees upon trust, and (see *Holt v. Everall*, 2 Ch. D. 273) to prevent the settlement in case of a trader being one coming within s. 91 of the Bankruptcy Act, 1869, or s. 47 of the Bankruptcy Act, 1883 (see s. 152 of that Act).

The first paragraph of this section again uses "separate use" instead of "separate property," being adapted probably from s. 10 of the Act of 1870. This part of the section appears superfluous, "property" being defined by s. 24 to include a thing in action, and therefore a policy; but this definition was not introduced till a late stage of the Bill.

Effect of policy
for benefit of
wife and
children under
Act of 1870.

In the case of *Re Adam's Policy Trusts*, 23 Ch. D. 525, 530, Chitty, J., seemed to think that under the M. W. P. A., 1870, s. 10 (which is nearly the same as s. 11 of this Act), a policy effected by a married man for the benefit of his wife and children operates to give the money to the wife for her life, with remainder to the children who survive the husband.

Title of
petition.

As to the title now of a petition for appointment of new trustees of a policy under M. W. P. A., 1870, see *Re Soutar's Policy Trust*, 26 Ch. D. 236, where Pearson, J., seemed to think that s. 10 of the Act of 1870 is no longer in force.

Remedies of
married
woman for
protection and
security of
separate
property.

12. Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso herein-after contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a feme sole, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. In any indictment or other proceeding under this section it shall be sufficient to allege such

property to be her property; and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding: Provided always, that no criminal proceeding shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about leave or desert, his wife.

SS. 12, 13.

13. A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the Acts relating to joint stock companies; and she may be sued for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof: Provided always, that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act for any such debt, contract, or wrong as aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under the Acts hereby repealed or otherwise, if this Act had not passed.

Wife's ante-nuptial debts and liabilities.

SS. 14, 15.

Husband to be
liable for his
wife's debts
contracted
before mar-
riage to a
certain extent.

14. A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, including any liabilities to which she may be so subject under the Acts relating to joint stock companies as aforesaid, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment made have been *bonâ fide* recovered against him in any proceeding at law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid; but he shall not be liable for the same any further or otherwise; and any Court in which a husband shall be sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property; Provided always, that nothing in this Act contained shall operate to increase or diminish the liability of any husband married before the commencement of this Act, for or in respect of any such debt or other liability of his wife as aforesaid.

Suits for ante-
nuptial
liabilities.

15. A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or for any wrong) contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them; and if in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him; and in any such action against husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to

the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only. SS. 15, 16, 17.

16. A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband. Act of wife liable to criminal proceedings.

Formerly (see *Reg. v. Brittleton*, 12 Q. B. D. 266) in criminal proceedings a husband's evidence could not be received against his wife: but see now the M. W. P. A. 1884, s. 1. Evidence in criminal cases.

17. In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as aforesaid in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any judge of the High Court of Justice in England or in Ireland, according as such property is in England or Ireland, or (at the option of the applicant irrespectively of the value of the property in dispute) in England to the Judge of the County Court of the district, or in Ireland to the chairman of the civil bill court of the division in which either party resides, and the Judge of the High Court of Justice or of the county court, or the chairman of the civil bill court (as the case may be) may make such order with respect to the property in dispute, and as to the costs of and consequent on the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit: Provided always, that any order of a Judge of the High Court of Justice to be made under the provisions of this section shall be subject to appeal in the same way Questions between husband and wife as to property to be decided in a summary way.

SS. 17, 18. — as an order made by the same Judge in a suit pending or on an equitable plaint in the said court would be; and any order of a county or civil bill court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same court would be, and all proceedings in a county court or civil bill court under this section in which, by reason of the value of the property in dispute, such court would not have had jurisdiction if this Act or the Married Women's Property Act, 1870, had not passed, may, at the option of the defendant or respondent to such proceedings, be removed as of right into the High Court of Justice in England or Ireland (as the case may be), by writ of certiorari or otherwise as may be prescribed by any rule of such High Court; but any order made or act done in the course of such proceedings prior to such removal shall be valid, unless order shall be made to the contrary by such High Court: Provided also, that the Judge of the High Court of Justice or of the county court, or the chairman of the civil bill court, if either party so require, may hear any such application in his private room: Provided also, that any such bank, corporation, company, public body, or society as aforesaid, shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only.

Married
woman as an
executrix or
trustee.

18. A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society in that character, without her husband, as if she were a feme sole.

This section seems to cover in certain cases more than is necessary, and to be scarcely sufficient in others. So far as the preceding sections apply to trust property, the express power to transfer the particular items of trust property here mentioned is not required, more especially as the married woman would not in most cases for the purposes of transfer be known to be a trustee. On the other hand unless the preceding sections do so apply, no provision is made for transfer of other kinds of trust property not mentioned in this section, as, for instance, land and choses in action. The section seems useful as an express provision that a married woman, as personal representative of a deceased person, may transfer funds standing in his name, and also funds standing at the commencement of the Act in her sole name of which she is trustee, or in her name jointly with others as trustees, to which cases ss. 6 and 8 do not apply.

SS. 18, 19.

By s. 24 the husband of a trustee, executrix, or administratrix, is freed from all liabilities of the wife in those characters, unless he has intermeddled with the trust or administration.

19. Nothing in this Act contained shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

Saving of existing settlements, and the power to make future settlements.

The last clause in this s., taken in connection with s. 1 (5), places a settlement or agreement for a settlement by a married woman trading separately from her husband within the principle of *Ex parte Bolland*, L. R. 17 Eq. 115.

Settlement by married woman, a trader, when void against creditors.

This section does not alter the construction of a settlement made before the Act. Thus a covenant therein by husband and wife, to settle all property of the wife except that given to her separate use will still

Construction of settlement of settlement not altered.

SS. 19, 20, 21,
22.

What settle-
ments are
saved.

include property not given to her separate use but to which under this Act she becomes entitled separately as a feme sole: *Re Stonor's Trusts*, 24 Ch. D. 195. But where the wife (as in case of infancy) is not bound by the husband's covenant to settle, the full effect of the covenant is not preserved, and the covenant does not bind property which, if the Act had not passed, would have become bound through falling into possession during the coverture. Any other construction would enable the husband by executing a covenant to settle the wife's property, wholly to defeat her rights under this Act, as this s. extends to a settlement or agreement made after the Act, and either before or after marriage: *Re Queade's Trusts*, W. N. 1884, p. 225.

Married ' woman to be liable to the parish for the maintenance of her husband.

31 & 32 Vict.
c. 122.

20. Where in England the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband out of such separate property as by the thirty-third section of the Poor Law Amendment Act, 1868, they may now make and enforce against a husband for the maintenance of his wife if she becomes chargeable to any union or parish. Where in Ireland relief is given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such relief is hereby declared to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable from such woman as if she were a feme sole by the same actions and proceedings as money lent.

Married woman to be liable to the parish for the maintenance of her children.

21. A married woman having separate property shall be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren: Provided always, that nothing in this Act shall relieve her husband from any liability imposed upon him by law to maintain her children or grandchildren.

Repeal of
33 & 34 Vict.
c. 93.
37 & 38 Vict.
c. 50.

22. The Married Women's Property Act, 1870, and the Married Women's Property Act, 1870, Amendment Act, 1874, are hereby repealed: Provided that such

repeal shall not affect any act done or right acquired while either of such Acts was in force, or any right or liability of any husband or wife, married before the commencement of this Act, to sue or be sued under the provisions of the said repealed Acts or either of them, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for, or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act.

SS. 22, 23, 24,
25, 26, 27.

The effect of this section seems to be to preserve the Act of 1870 as to all policies effected under it and therefore that the office must for its protection require the appointment of a trustee according to that Act and cannot safely pay to any other trustee or to the personal representative of the person whose life is assured as provided by this Act: but see *Re Soutar's Policy Trust*, 26 Ch. D. 236.

How far Act of
1870 preserved.

23. For the purposes of this Act the legal personal representative of any married woman shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living.

Legal repre-
sentative of
married
woman.

24. The word "contract" in this Act shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration. The word "property" in this Act includes a thing in action.

Interpretation
of terms.

It is not necessary now that the husband of a married woman should join in the administration bond on grant to her of letters of administration: *In the Goods of Ayres*, 8 P. D. 168.

Administration
bond.

25. The date of the commencement of this Act shall be the first of January one thousand eight hundred and eighty-three.

Commence-
ment of Act.

26. This Act shall not extend to Scotland.

Extent of Act.

27. This Act may be cited as the Married Women's Property Act, 1882.

Short title.

CHAPTER VI.

RULES OF THE SUPREME COURT,
DECEMBER, 1882.

SECT. I.

Rules under the Act for the Abolition of Fines and Recoveries, and Section 7 of the Conveyancing Act, 1882.

1. No person authorized or appointed under the Act 3 & 4 Will. IV. c. 74 (in these Rules referred to as the Fines and Recoveries Act), to take the acknowledgments of deeds by married women shall take any such acknowledgment if he is interested or concerned either as a party or as solicitor or clerk to the solicitor for one of the parties or otherwise in the transaction giving occasion for the acknowledgment.

2. Before a Commissioner shall receive an acknowledgment, he shall inquire of the married woman separately and apart from her husband and from the solicitor concerned in the transaction whether she intends to give up her interest in the estate to be passed by the deed without having any provision made for her; and where the married woman answers in the affirmative and the Commissioner shall have no reason to doubt the truth of her answer, he shall proceed to receive the acknowledgment; but if it shall appear to him that it is intended that provision is to be made for the married woman, then the Commissioner shall not take her acknowledgment until he is satisfied that such provision has been actually made by some deed or writing produced to him; or if such provision shall not have been actually made before, then the Commissioner shall require the

terms of the intended provision to be shortly reduced into writing, and shall verify the same by his signature in the margin, at the foot or at the back thereof.

3. The memorandum to be indorsed on or written at the foot or in the margin of a deed acknowledged by a married woman shall be in the following form in lieu of the form set forth in section 84 of the Fines and Recoveries Act :

“This deed was this day produced before me and acknowledged by therein named to be her act and deed [*or* their several acts and deeds] previous to which acknowledgment [*or* acknowledgments] the said was [*or* were] examined by me separately and apart from her husband [*or* their respective husbands] touching her [*or* their] knowledge of the contents of the said deed and her [*or* their] consent thereto and [each of them] declared the same to be freely and voluntarily executed by her.”

4. When an acknowledgment is taken by any person other than a judge, the following declaration shall be added to the memorandum of acknowledgment :

“And I declare that I am not interested or concerned either as a party or as a solicitor or clerk to the solicitor for one of the parties or otherwise in the transaction giving occasion for the said acknowledgment.”

5. A memorandum of acknowledgment purporting to be signed according to any of the following forms shall be deemed to be a memorandum purporting to be signed by a person authorized to take the acknowledgment :—

(Signed) A. B.

A Judge of the High Court of Justice in England,
or a Judge of the County Court of

or a perpetual Commissioner for taking acknowledgments of deeds by married women.

or The special Commissioner appointed to take the aforesaid acknowledgment.

But this rule is not to derogate from the effect of any memorandum purporting to be signed by a person

authorized to take the acknowledgment, though not signed in accordance with any of the above forms.

6. Nothing in the five preceding rules contained shall make invalid any acknowledgment which would have been valid if these rules had not been enacted.

7. Every Commission appointing a special Commissioner to take an acknowledgment by a married woman shall be returned to the office of the registrar of certificates of acknowledgments of deeds by married women and shall be there filed. An index shall be prepared and kept in the said office, giving the names and addresses of the married women named in all such commissions filed in the said office after the 31st December, 1882. The same rules shall apply to searches in the index so to be prepared as to searches in the other indexes and registers kept in the Central Office.

8. (*Provides for costs.*)

SECT. II.

Rules under Section 2 of the Conveyancing Act, 1882 (a).

1. Every requisition for an official search shall state the name and address of the person requiring the search

(a) These rules should be read in connection with R. S. C., 1883, Order LXI. Rule 9, which provides that—

All deeds which by any statute or statutory rule are directed or permitted to be enrolled in any of the Courts whose jurisdiction has been transferred to the High Court of Justice, may be enrolled in the Enrolment Department of the Central Office ;

And with Rule 23 of the same Order, which provides that—

The Clerk of Enrolments and each of the following Registrars, namely—

The Registrar of Bills of Sale,

The Registrar of Certificates of Acknowledgments of Deeds, by Married Women, and

The Registrar of Judgments,

shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes under his custody, and issue a certificate of the result of the search.

to be made. Every requisition and certificate shall be filed in the office where the search was made.

2. Every person requiring an official search to be made pursuant to section 2 of the Conveyancing Act, 1882, shall deliver to the officer a declaration according to the Forms I. and II. in the Appendix, purporting to be signed by the person requiring the search to be made, or by a solicitor, which declaration may be accepted by the officer as sufficient evidence that the search is required for the purposes of the said section. The declaration may be made in the requisition, or in a separate document.

3. Requisitions for searches under section 2 of the Conveyancing Act, 1882, shall be in the Forms III. to VI. in the Appendix, and certificates of the results of such searches shall be in the Forms VII. to X., with such modifications as the circumstances may require.

4. Where a certificate setting forth the result of a search in any name has been issued, and it is desired that the search be continued in that name, to a date not more than one calendar month subsequent to the date of the certificate, a requisition in writing in the Form XI. in the Appendix may be left with the proper officer, who shall cause the search to be continued, and the result of the continued search shall be endorsed on the original certificate and upon any office copy thereof which may have been issued, if produced to the officer for that purpose. The endorsement shall be in the Form XII. in the Appendix with such modifications as circumstances require.

5. Every person shall upon payment of the prescribed fee be entitled to have a copy of the whole or any part of any deed or document enrolled in the Enrolment Department of the Central Office.

*Rule under the Conveyancing and Law of Property Act,
1881.*

6. An alphabetical index of the names of the grantors of all powers of attorney filed under section 48 of the

Conveyancing and Law of Property Act, 1881, shall be prepared and kept by the proper officer, and any person may search the index upon payment of the prescribed fee. No person shall take copies of or extracts from any power of attorney or other document filed under that section and produced for his inspection. All copies or extracts which may be required shall be made by the Office.

APPENDIX.

FORM I.

DECLARATION BY SEPARATE INSTRUMENT AS TO PURPOSES OF SEARCH.

Supreme Court of Judicature.

Central Office.

To the Clerk of Enrolments

or The Registrar of

Royal Courts of Justice,

London.

In the Matter of *A.B.* and *C.D.*

I declare that the search (*or searches*) in the name (*or names*) of required to be made by the requisition for search, dated the is (*or are*) required for the purposes of a sale (*or mortgage, or lease, or as the case may be*), by *A.B.* to *C.D.*

Signature, }
Address, and }
Description. }

Dated

FORM II.

DECLARATION AS TO PURPOSES OF SEARCH CONTAINED IN THE REQUISITION.

I declare that the above-mentioned search is required for the purposes of a sale (*or mortgage, or lease, or as the case may be*), by *A.B.* to *C.D.*

FORM III.

REQUISITION FOR SEARCH IN THE ENROLMENT OFFICE (a) UNDER
THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature.
Central Office.

Requisition for Search.

To the Clerk of Enrolments,
Royal Courts of Justice,
London.

In the Matter of *A.B.* and *C.D.*

Pursuant to section 2 of the Conveyancing Act, 1882,
search for deeds and other documents enrolled during the
period from 18 to 18, both inclusive, in the
following name (or names).

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.

(Add declaration, Form II.)

(State if an office copy of the certificate is desired, and whether
it is to be sent by post or called for.)

Signature, address, and
description of person
requiring the search. }

Dated

See as to this requisition, note p. 141, *supra*.

(a) *I.e.* the Enrolment Department of the Central Office: see R.S.O.
1883, Or. lxi., r. 9.

FORM IV.

REQUISITION FOR SEARCH IN THE BILLS OF SALE DEPARTMENT
UNDER THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Registrar of Bills of Sale,
Royal Courts of Justice.
London.

In the Matter of *A.B.* and *C.D.*

Pursuant to section 2 of the Conveyancing Act, 1882,
search for instruments registered or re-registered as bills of
sale during the period from 18 to 18, both
inclusive, in the following name (*or names*).

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.

(Add declaration, Form II.)

(State if an office copy of the certificate is desired, and whether
it is to be sent by post or called for.)

Signature, address, and
description of person
requiring the search. }

Dated

FORM V.

REQUISITION FOR SEARCH IN THE REGISTRY OF CERTIFICATES OF
ACKNOWLEDGMENTS OF DEEDS BY MARRIED WOMEN UNDER
THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Registrar of Certificates of Acknowledgments of
Deeds by Married Women,
Royal Courts of Justice,
London.

In the Matter of *A.B.* and *C.D.*

Pursuant to section 2 of the Conveyancing Act, 1882,
search for Certificates of Acknowledgments of Deeds by
Married Women during the period from 18 to
18 , both inclusive, according to the particulars mentioned
in the schedule hereto.

THE SCHEDULE.

Surname.	Christian Name or Names of Wife and Husband.	Date of Cer- tificate if the Search relates to a particular Certificate.	Date of Deed, if the Search relates to a particular Deed.	County, Parish, or Place in which the Pro- perty is situate, or other de- scription of the Property.

(Add declaration, Form II.)

(State if an office copy of the certificate is desired, and whether
it is to be sent by post or called for.)

Signature, address, and }
description of person }
Dated requiring the search. }

As to this search, see note, p. 147, *supra*.

FORM VI.

REQUISITION FOR SEARCH IN THE REGISTRY OF JUDGMENTS
UNDER THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Registrar of Judgments,
Royal Courts of Justice,
London.

In the Matter of *A.B.* and *C.D.*

Pursuant to section 2 of the Conveyancing Act, 1882, search for judgments, revivals, decrees, orders, rules and lis pendens, and for judgments at the suit of the Crown, statutes, recognizances, Crown bonds, inquisitions, and acceptances of office for the period from 18 to 18 , both inclusive and for executions for the period from the 29th July, 1864 (*or as the case may require*) to the 18 , both inclusive, and for annuities for the period from the 26th April, 1855 (*or as the case may require*) to the 18 , both inclusive in the following name (*or names*).

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.

(Add declaration, Form II.)

(State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.)

Signature, address, and
description of person
requiring the search. }

Dated

This requisition and the corresponding certificate (Form X. *post*) do not expressly refer to a search for writs of execution on Crown debts, which is the proper search since 1st November, 1865, under 28 & 29 Vict. c. 104. This search is a general search not limited in time except by the date of commencement of the register (see *ante*, p. 141). It is made in the same register as the search for executions on ordinary judgments (Dart, V. & P. p. 495, 5th ed.), and will therefore be included under the general expression "for executions."

The day, 29th July, 1864, mentioned in this requisition, is the earliest day from which writs of execution on ordinary judgments are registered in the name of the judgment debtor pursuant to 27 & 28 Vict. c. 112, but no search for those writs is necessary, although the purchaser or mortgagee must see that the vendor or mortgagor is in possession at the time of completion (see note, p. 139, *supra*; see also notes, pp. 140, 141, for other searches required by this requisition).

FORM VII.

CERTIFICATE OF SEARCH BY ENROLMENT DEPARTMENT UNDER THE
CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office,

Enrolment Department.

Certificate of Search pursuant to Section 2 of the Convey-
ancing Act, 1882.

In the Matter of *A.B.* and *C.D.*

This is to certify that a search has been diligently made in the Enrolment Office for deeds and other documents in the name (*or names*) of for the period from to both inclusive, and that no deed or other document has been enrolled in the said office in that name (*or in any one or more of those names*) during the period aforesaid.

or, and that except the described in the schedule hereto, no deed or document has been enrolled in that name (*or in any one or more of those names*) during the period aforesaid.

THE SCHEDULE.

Dated

As to this search, see p. 141, *supra*.

FORM VIII.

CERTIFICATE OF SEARCH BY THE REGISTRAR OF BILLS OF SALE
UNDER THE CONVEYANCING ACT, 1882.

Supreme Court of Judicature,
Central Office,
Bills of Sale Department.

Certificate of Search pursuant to Section 2 of the Convey-
ancing Act, 1882.

In the Matter of *A.B.* and *C.D.*

This is to certify that a search has been diligently made
in the Register of Bills of Sale in the name (*or* names) of
for the period from 18 to 18 both
inclusive, and that no instrument has been registered or
re-registered as a bill of sale in that name (*or* in any one or
more of those names) during that period.

or, and that except the described in the schedule
hereto, no instrument has been registered or re-registered as
a bill of sale in that name (*or* in any one or more of those
names) during the period aforesaid.

THE SCHEDULE.

Dated

FORM IX.

CERTIFICATE OF SEARCH BY REGISTRAR OF CERTIFICATES OF
ACKNOWLEDGMENTS OF DEEDS BY MARRIED WOMEN UNDER
THE CONVEYANCING ACT, s. 2.

Supreme Court of Judicature,
Central Office.

Registry of Certificates of Acknowledgments of Deeds by
Married Women.

Certificate of Search pursuant to Section 2 of the Convey-
ancing Act, 1882.

In the Matter of *A.B.* and *C.D.*

This is to certify that a search has been diligently made
in the Office of the Registrar of Certificates of Acknowledg-

ments of Deeds by Married Women in the name (or names) of for the period from to 18 , both inclusive, for a certificate dated the or for certificates of acknowledgment of a deed dated the

or for certificates of acknowledgments of deeds relating to *(fill in the description of the property from the Requisition)* and that no such certificate has been filed in that name (or in any one or more of those names) during the period aforesaid. or, and that except the certificate (or certificates) described in the Schedule hereto, no such certificate has been filed in that name (or in any one or more of those names) during the period aforesaid.

Surname.	Christian Names of Wife and Husband.	Date of Certificate	Date of Deed.	County, Parish, or Place in which Property situated, or other description of the Property.

Dated day of 188 .

FORM X.

CERTIFICATE OF SEARCH BY REGISTRAR OF JUDGMENTS UNDER
CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

The Registry of Judgments.

Certificate of Search pursuant to Section 2 of the Convey-
ancing Act, 1882.

In the Matter of *A.B.* and *C.D.*

This is to certify that a search has been diligently made
in the Office of the Registrar of Judgments for judgments,

revivals, decrees, orders, rules, lis pendens, judgments at the suit of the Crown, Statutes, recognizances, Crown bonds, inquisitions, and acceptances of office, for the period from 18 to 18, both inclusive, and for executions for the period from 18 to 18, both inclusive, and for annuities for the period from 18 to 18, both inclusive, in the name (or names) of and that no judgment, revival, decree, order, rule, lis pendens, judgment, at the suit of the Crown, Statute, recognizance, Crown bond, inquisition, acceptance of office, execution or annuity has been registered or re-registered in that name (or in any one or more of those names) during the respective periods covered by the aforesaid searches.

or and that except the mentioned in the Schedule hereto, no judgment, revival, decree, order, rule, lis pendens, judgment at the suit of the Crown, Statute, recognizance, Crown bond, inquisition, acceptance of office, execution, or annuity has been registered or re-registered in that name (or in any one or more of those names) during the respective periods covered by the aforesaid search.

THE SCHEDULE.

Dated the day of 188 .

FORM XI.

REQUISITION FOR CONTINUATION OF SEARCH UNDER THE CONVEYANCING ACT, 1882.

Supreme Court of Judicature.

Central Office.

Requisition for continuation of Search.

To the Clerk of Enrolments

or the Registrar of

Royal Courts of Justice,

London, W.C.

In the Matter of *A.B.* and *C.D.*

Pursuant to section 2 of the Conveyancing Act, 1882,
continue the search for [], made pursuant to the

RULES.

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requisition dated the day of 18 , in the name
(or names) of , from the day of to the
day of 18 , both inclusive.

Signature, address, and }
description of person }
requiring the search.)

Dated

FORM XII.

CERTIFICATE OF RESULT OF CONTINUED SEARCH UNDER THE
CONVEYANCING ACT, 1882, s. 2, TO BE ENDORSED ON ORIGINAL
CERTIFICATE.

This is to certify that the search (or searches) mentioned
in the within written certificate has (or have) been dili-
gently continued to the day , 18 , and
that up to and including that date [except the men-
tioned in the schedule hereto (*these words to be omitted
where nothing is found*)], no deed or other document has been
enrolled or no instrument has been registered, or re-regis-
tered, as a bill of sale, or no certificate has been filed, or no
judgment, revival, decree, order, rule, lis pendens, judgment
at the suit of the Crown, statute, recognizance, Crown bond,
inquisition, acceptance of office, execution or annuity, has
been registered or re-registered in the within-mentioned
name (or in any one or more of the within-mentioned
names).

Dated

PART II.

FORMS.

CHAPTER I.

CONTRACTS FOR SALE GENERALLY.

IN framing contracts and conditions of sale under the V. & P. A. and C. A. the following rules may afford assistance.

Length of
title.

1. Where a title for forty years and upwards before the date of the contract is intended to be furnished, the date of commencement need not be specified, except in the following cases:—

- (a.) Advowsons or reversionary interests (Dart, 293, 294, 5th ed.).
- (b.) Tithes or other property derived from the Crown where evidence of the Crown grant is to be negatived.
- (c.) Where the document first abstracted is a will and evidence of seisin is to be precluded: *Parr v. Lovegrove*, 4 Drew. 170.
- (d.) Where the document first abstracted is a voluntary settlement, or articles for a settlement, or a conveyance under a power or trust for sale, or the bar of an entail, or other document of a similar kind, deriving its effect from some prior instrument.

If the date be not fixed, the date of a recited deed may be the time prescribed by V. & P. A., s. 1 (see the last clause of that s.), and an abstract of the deed may be

required. The safest course is always to fix the date of commencement, and in the cases under (d) the nature of the instrument commencing the title should also be stated: *Re Marsh & Earl Granville*, 24 Ch. D. 11, 21.

2. The title of leaseholds for years commences with the lease (V. & P. A., s. 2) or the underlease (C. A. s. 3 (1)). Leaseholds.

3. Unless the contrary be shewn, the last receipt for rent proves the validity of the lease and due performance of covenants therein, and in the case of an underlease also the validity of every superior lease and due performance of the covenants therein, C. A. s. 3 (4), (5): but where the rent is nominal and no receipt is obtained, special provision must be made.

4. The title to the freehold of enfranchised copyholds or customary freeholds commences with the deed of enfranchisement: C. A. s. 3 (2). Enfranchised copyholds.

5. The commencement of title being fixed, requisitions on the prior title are precluded: C. A. s. 3 (3).

6. As a general rule, all evidence in support of title, and production of all documents not in the vendor's possession, and copies of records must be obtained by the vendor at the expense of the purchaser: C. A. s. 3 (6); or the obtaining and production must be precluded by condition. Evidence.

7. The commencement of title being fixed, all subsequent documents not of record, must be produced, if in the vendor's possession, by and at the expense of the vendor, and if not in vendor's possession, then by the vendor at the expense of the purchaser, C. A. s. 3 (6), or production must be precluded by condition.

8. As to land, recitals of facts in documents twenty years old are evidence: V. & P. A. s. 2 (2). Recitals.

9. Only one abstract of the same title need be furnished to a purchaser of several lots: C. A. s. 3 (7). One abstract for several lots.

10. Copies, if required by a purchaser, of documents not handed over must be paid for by him: C. A. s. 3 (6). Documents not delivered to purchaser.

11. An equitable right to production of documents is

sufficient without a covenant for production: V. & P. A. s. 2 (3).

12. The expense of a covenant for production, or of an acknowledgment or undertaking, falls on the purchaser: V. & P. A. s. 2 (4).

13. Where a vendor does not sell the whole property, he may retain the deeds: V. & P. A. s. 2 (5).

Execution of
conveyance.

14. The purchaser cannot require the conveyance to be executed in his presence or in that of his solicitor: C. A. s. 8.

Payment of
purchase-
money.

15. He may still require that the purchase-money be paid to the vendor personally, but he may pay it to a solicitor producing the conveyance executed, with a receipt in or indorsed upon it (C. A. s. 56), unless the vendor is a trustee (*Re Bellamy and the Metropolitan Board of Works*, 24 Ch. D. 387; *Re Flower and Same*, 27 Ch. D. 592).

CHAPTER II.

AGREEMENT FOR SALE OF LAND BY PRIVATE CONTRACT.

AN AGREEMENT made the day of between A., of Parties.
&c., hereinafter called the vendor, of the one part, and B.,
of &c., hereinafter called the purchaser, of the other part,

Whereby the vendor, so far as relates to the acts on his Agreement
part to be performed, agrees with the purchaser, and the
purchaser, so far as relates to the acts on his part to be per-
formed, agrees with the vendor as follows, that is to say :

1. The vendor is to sell and the purchaser is to pur- to sell and
chase at the price of £ the property hereinafter purchase.
mentioned, and the fee simple thereof in possession [*or*
in the case of copyholds, say, the inheritance thereof in
possession according to the custom of the Manor of
in the county of , *or in case of leaseholds, say, held*
under lease [underlease] dated the day of for
the term of years from the day of [*in*
case of underlease, say, less the last days thereof] at
the yearly rent of £ , and all the term and interest Price.
granted by that lease [underlease] subject to the lessee's
[underlessee's] covenants and the provisions therein con-
tained and] subject to the tenancies (a) but free from
incumbrances, that is to say :

ALL that, &c., which Parcels.
premises are more particularly described in the schedule

(a) Under these words alone the purchaser is not fixed with notice Tenancies.
of the terms of the tenancy as between himself and his vendor: *Cabal-*
lero v. Henty, L. R. 9 Ch. A. 447. There must be an express con-
dition. See a condition, p. 192, and also special condition No. 32,
post.

hereto, and are intended to be delineated on the plan hereto annexed, and to be thereon coloured (a).

Time for
completion.

2. The purchaser [*where there is a deposit say* (b) having this day paid to the vendor the sum of £ , as a deposit and in part payment of his purchase-money] is to pay [the balance of] his purchase-money on the day of next, at the office, No. Street, in

Possession.

, of Messrs. , the solicitors of the vendor, at which time and place the purchase is to be completed, and the purchaser paying [the balance of] his purchase-money [and the amount of valuation as hereinafter provided] is as from that day to be let into possession or into receipt of rents and profits, and up to that day all rent, rates, taxes, and outgoings are (if necessary) to be apportioned, and if from any cause whatever other than wilful default on the part of the vendor the completion of the purchase is delayed beyond the last-mentioned day, [the balance of] the purchase-money [and the amount of the valuation] is [are] to bear interest at the rate of 5 per cent. per

(a) Where several leases or underleases are sold together, instead of the first paragraph, say

1. The vendor is to sell and the purchaser is to purchase at the price of £ All those pieces of land with the messuages thereon shortly described in the first column of the schedule hereto, free from incumbrances, for the residues of the respective terms mentioned in the second column of the same schedule granted by the several leases [underleases] the dates whereof are mentioned in the third column of the same schedule, at the several rents mentioned in the fourth column of the same schedule, subject to the lessee's [underlessee's] covenants, and the provisions contained in the said leases [underleases] and subject also to the tenancies affecting the premises.

(b) In sales by private contract there is generally no deposit, the purchaser being known, though sometimes a deposit is required.

annum from that day to the day of actual payment thereof (a). Interest in case of delay.

3. The purchaser is within days after delivery (b) Time for delivery of requisitions,
of his abstract to send to the said
the solicitors of the vendor, a statement in writing of
all the objections and requisitions (if any) as to the
title or evidence of title, or the abstract, and subject
thereto the title is to be deemed accepted, and all
objections and requisitions not included in any state-
ment sent within the time aforesaid are to be deemed
waived, and any answer to any objection or requisition and replies to answers.
is to be replied to in writing within ten days after the
delivery thereof, and if not so replied to is to be con-
sidered satisfactory, and time is to be deemed in all
respects as of the essence of this clause; and if the
purchaser should take any objection or make any
requisition which the vendor is unable or unwilling to
remove or comply with, and should not withdraw the
same after being required so to do, the vendor may by
notice in writing delivered to the purchaser or his If any objec-
tion cannot be
answered
solicitor, and notwithstanding any intermediate negotia-
tion, rescind this agreement, and the purchaser is to
return forthwith all abstracts and papers in his possession Power to
rescind.
belonging to the vendor, and not to make any claim on
the vendor for costs or otherwise (c).

(a) Where the delay in the completion arises from the default of the vendor, the purchaser may relieve himself from paying interest by depositing the purchase money in a bank to a separate account, and giving notice to the vendor, notwithstanding that he has been in possession or receipt of the rents under the contract, but the vendor is entitled to the interest (if any) allowed by the bank on the deposit: *Re Gold & Norton*, W. N. 1885, p. 6. See also *Re Monckton & Gilzean*, 27 Ch. D. 556. Delay by default of vendor.

(b) No time should be stated for delivery of the abstract, for the reasons given in the first note to the 4th ordinary condition, *post*.

(c) If there is a deposit, the latter part of this clause should be as in the latter part of the 4th ordinary condition, *post*.

See cases where such a condition as that in the text enables the vendor to rescind: *Duddell v. Simpson*, L. R. 2 Ch. 102; *Mawson v. Fletcher*, ib. 6 Ch. 91; *Gray v. Fowler*, ib. 8 Ex. 249; *Heppenstall v. Rose*, W. N. 1884, p. 199. Where there was no provision enabling the Vendor's power to rescind.

Here add condition as to commencement of title, special condition No. 5, and, if required, clause for taking timber and fixtures at a valuation, special condition, No. 2, and other special conditions, see post.

On a sale of leaseholds, add, if required, special conditions Nos. 26, or 27, 29, 30, post.

Contents of
lease[s] or
underlease[s].

A copy [or copies] [of the said lease [underlease] [or the leases [underleases] referred to in the schedule] and] of the leases or agreements (if any) under which the tenants hold, have been perused by the purchaser, and he shall be deemed to purchase with notice of all the contents thereof.

Add clause as to preparation and delivery of conveyance, 5th ordinary condition, p. 196, and as to compensation or excluding compensation, special conditions Nos. 43 or 44, post.

Power to re-
sell on default.

Lastly. If the purchaser should neglect or fail to perform this agreement on his part [*where there is a deposit say, his deposit money is to be forfeited to the vendor, (a) and*] the vendor may with or without notice resell the premises without previously tendering a conveyance to the defaulting purchaser, and any resale may be made by auction or private contract at such time, subject to such conditions, and in such manner generally as the vendor thinks proper; and if thereby the vendor should incur a loss by reason of diminution in price or expenses incurred, or both, the purchaser under this agreement is to pay to the vendor the amount of such loss as liquidated damages (b) [receiving credit

purchaser to withdraw his objections when required: see *Re Dames and Wood*, 27 Ch. D. 172. Where the title has been accepted the vendor has no power to rescind on the ground that the conveyance should contain covenants which were contained in an abstracted deed but were not noticed in the abstract: *Re Monckton and Gilzean*, 27 Ch. D. 555.

Forfeiture of
deposit.

(a) Even where there is no provision as to forfeiture, the deposit would be forfeited; *Collins v. Stimson*, 11 Q. B. D. 142; *Howe v. Smith*, 27 Ch. D. 89.

Liquidated
damages.

(b) Whether liquidated damages will be enforced as a forfeiture or treated as a penalty: see *Wallis v. Smith*, 21 Ch. D. 243, and cases there cited.

for the deposit (a)] and on any resale by auction the premises may be bought in, and all expenses consequent on an unsuccessful attempt to resell are to be forthwith paid to the vendor by the purchaser under this agreement.

In witness, &c.

THE SCHEDULE ABOVE REFERRED TO.

For AGREEMENTS FOR SALE OF FREEHOLDS and of HEIRLOOMS by a TENANT FOR LIFE, see the work by the authors on the Settled Land Act, 1882.

(a) See *Ockenden v. Henly*, 4 Jur. N. S. 999.

CHAPTER III.

CONDITIONS OF SALE.

SECT. I.

ORDINARY CONDITIONS OF SALE BY AUCTION (*a*).

- | | |
|------------------------------------|--|
| Highest bidder. | 1. THE highest bidder is to be the purchaser, the vendor[s] fixing a reserve price and reserving the right |
| Reserve price. | to bid up to such reserve price [for each lot] by himself [themselves] or his [their] agent (<i>b</i>) [and also the right to consolidate two or more lots into one and to rearrange any lot or lots]. |
| Advance on bidding and retracting. | 2. No person is to advance less than £ [the sum to be fixed by the auctioneer] on each bidding, or retract a bidding; and if any dispute arise, the property [lot in dispute] is to be put up again at the last undisputed bidding, or the auctioneer may determine the dispute. |
| Deposit. | 3. The [Each] purchaser is at the close of the sale to him to pay down a deposit of [] per cent. on the amount of his purchase-money, and to sign an agreement |

(*a*) It is convenient to have some rule as to the order of conditions of sale, and the following is suggested as agreeing with the order in which the transactions take place:—

- (1) As to the auction.
- (2) Delivery of abstract and requisitions.
- (3) Matters arising on the abstract.
- (4) Matters arising on the particulars (identity, &c.).
- (5) The conveyance and its contents.
- (6) Compensation.
- (7) Resale on default.

As to conditions supplied by the V. & P. A. and C. A., see pp. 186–188, *ante*.

(*b*) As to bidding and reserve price, see 30 & 31 Vict. c. 48.

in the form subjoined to these conditions for the completion of his purchase according to these conditions, and to pay the remainder of his purchase-money [and the amount of valuation as hereinafter provided] on the day of at the office, No. Street in , of Messrs. the solicitors of the vendor[s], at which time and place the purchase[s] is [are] to be completed; and the [a] purchaser paying his purchase-money is as from that day to be let into possession or receipt of rents and profits, and up to that day all rent, rates, taxes, and outgoings are (if necessary) to be apportioned; and if from any cause whatever, other than wilful default on the part of the vendor[s], the completion of the [any] purchase is delayed beyond the before-mentioned day, the remainder of the purchase-money [together with the amount of valuation] is to bear interest at the rate of 5 per cent. per annum from that day to the day of actual payment thereof.

Possession.

Interest in case of delay.

4. The [Each] purchaser is within days after the delivery of his abstract (a) to send to the solicitors of the vendor[s], a statement in writing of all the objections to (b) and requisitions if any as to the title or evidence of title, or the abstract, and subject thereto the title is to be deemed accepted, and all objections and requisitions not included in any statement sent within the time aforesaid are to be deemed waived, and an answer to any objection or requisition is to be replied to in writing within ten days after the delivery thereof, and if not so replied to is to be considered satisfactory, and

Time for delivery of requisitions,

and replies to answers.

(a) There should be no time specified for delivery by the vendor of his abstract, lest he should fail in delivering it within the specified time, or should deliver an imperfect abstract (see *Dart*, V. & P. 125, 304, 5th ed.), but in sales under the Court the Act requires a time to be stated, see 15 & 16 Vict. c. 86, s. 56.

Time for delivery of abstract whether to be stated.

(b) The time for taking objections does not begin to run until a complete abstract has been delivered (*Hobson v. Bell*, 2 Beav. 17; *Want v. Stallibrass*, L. R. 8 Ex. 175). The condition does not apply to matters not disclosed (*Warde v. Dixon*, 28 L. J. Ch. 315), nor to an objection which goes to the root of the title (*Re Tanqueray-Willlaume and Landau*, 20 Ch. D. 465, 474).

What objections may be taken after time fixed.

time is to be deemed in all respects as of the essence of this condition. If the [any] purchaser should take any objection or make any requisition which the vendor[s] is [are] unable or unwilling to remove or comply with, and should not withdraw the same after being required so to do, the vendor[s] may by notice in writing delivered to the [such] purchaser or his solicitors, and notwithstanding any intermediate negotiation, rescind the contract for sale, (a) and the vendor[s] is [are] within one week after such notice to repay to the purchaser [whose contract is so rescinded] his deposit money which is to be accepted by him in satisfaction of all claims on any account whatever, and the purchaser is to return forthwith all abstracts and papers in his possession belonging to the vendor[s].

If requisition
cannot be
answered

Power to
rescind.

[Here add clause as to commencement of title, special condition, No. 5, post. and, if required, clause as to taking timber and fixtures at a valuation, special condition, No. 2, and other special conditions, see post.]

Preparation of
conveyance.

Delivery of
draft.

5. The conveyance to the [each] purchaser is to be prepared by him and at his own expense, and the engrossment thereof is to be delivered at the office of the solicitors of the vendor[s] before the day of next for execution by the vendor[s] and other necessary parties (if any), and the draft of such conveyance for perusal and approval on behalf of the vendor[s] and other necessary parties (if any) is to be left at the office of such solicitors at least seven days before delivery of the engrossment.

[Here add clause as to compensation or excluding compensation, see special condition No. 43 or 44, post, as the case may be.]

Power to resell
on default.

Lastly—If the [any] purchaser should neglect or fail to comply with any of the above conditions, his deposit money is to be forfeited to the vendor[s], who may with or without notice resell the premises [the lot or lots

(a) As to the vendor's power to rescind, see note (c) p. 191, and as to forfeiture of the deposit see note (a) p. 192.

in respect whereof default occurs] without previously tendering a conveyance to the defaulter at this sale, and any resale may be made by auction or private contract at such time, subject to such conditions and in such manner generally as the vendor[s] may think proper; and if thereby the vendor[s] should incur a loss by reason of diminution in price or expenses incurred, or both, after taking into account the deposit (a), the defaulting purchaser at this sale is to pay to the vendor[s] the amount of such loss as liquidated damages (b), and on any such resale by auction the premises [lot or lots offered for sale] may be bought in, and all expenses consequent on an unsuccessful attempt to resell are to be forthwith paid to the vendor[s] by the defaulter at this sale.

Be it remembered that at the sale by auction this day of _____ of the property mentioned in the annexed particulars of sale, _____ of _____ was the highest bidder for the premises [Lot _____], and was declared the purchaser thereof, subject to the above conditions, at the price of £ _____, and has paid the sum of £ _____ by way of deposit, and agrees to pay to _____ (c), the vendor[s], according to the above conditions the balance of the said purchase-money [and also the valuation money]; and the vendor[s] and purchaser hereby agree to complete the sale in accordance with the above conditions of sale.

Memorandum
for signature.

Purchase-money, £ _____ .

Deposit, £ _____ .

Balance, £ _____ .

Abstract of title to be sent to _____ .

(a) See *Ockenden v. Henly*, 4 Jur. N. S. 939.

(b) As to liquidated damages being enforced or treated as a penalty, see note (b) to p. 192.

(c) The vendor must be named or otherwise sufficiently described: Vendor to be named or described. see Dart, 218, 5th ed.; *Callling v. King*, 5 Ch. D. 660; *Rossiter v. Miller*, 3 App. C. 1124. "Vendor" is not a sufficient description: *Potter v. Luffield*, L. R. 18 Eq. 4.

SECT. II.

SPECIAL CONDITIONS OF SALE.

Power to
withdraw,
refuse bidding,
and re-arrange
lots.

1. The auctioneer may withdraw the property [any lot] from sale without declaring the reserve price, and may refuse any bidding and may combine any lots in one lot, or may offer the property for sale in other lots than those mentioned in the particulars.

Timber [and
fixtures] at a
valuation.

2. The [Each] purchaser is, in addition to his purchase-money, to pay for [the fixtures and for] all timber and timber-like trees, tellers, pollards, saplings, and plantations (if any) down to 1s. per stick inclusive, and underwood down to the stem, according to a valuation to be made (a) in manner following—that is to say, each party (vendor and purchaser), or their respective solicitors, is within twenty-one days after the sale to appoint by writing one person as valuer, and to give notice in writing to the other party of the name and address of the person so appointed, and the two persons so appointed are to make the valuation, but are before they commence their duty to appoint an umpire by writing, and the decision of the two valuers if they agree, or of their umpire if they disagree, is to be final, and in case the [any] purchaser should neglect or refuse to appoint a valuer and give notice thereof in manner and within the time before specified, the valuer appointed by the vendor is alone to make the valuation, and his valuation is to be final.

Where pro-
perty sold with
possession.

3. The vendor reserves the right to cut and sell all the growing crops, and the right to the use of the grazing, and the right to the garden fruits and crops up to the time when under these conditions the purchaser is to be let into possession [and also the right to dig up and remove the crops of at any time before the day of next].

(a) For a shorter form of valuation add here the word "by," and continue the latter part of special condition No. 43, commencing "two referees."

4. A purchaser whose purchase-money does not exceed £ is not, except upon the terms afterwards mentioned, to require delivery to him of an abstract of title, but may within ten days after the sale [*or in a sale under the Court* after the certificate of the result of the sale has become binding] attend at the office of Messrs. at , during the hours of ten to four in the day, to examine and take extracts from an abstract prepared in accordance with these conditions; nevertheless on giving notice in writing to Messrs. requesting an abstract, and also on paying to them the sum of £ within four days after the sale [*or after the certificate of the result of the sale has become binding*], he is to have delivered to him an abstract prepared in accordance with these conditions, and whether he so attend or not, he is to be bound by these conditions, and in case no abstract is required, he is to be so bound in the same way as if an abstract had been actually delivered to him on the tenth day after the sale [*or after the certificate of the result of the sale has become binding*], and is to be considered as having had such abstract actually delivered to him on that day.

As to abstract of title to small lots.

Each purchaser to whom an abstract is delivered pursuant to these conditions is within, &c. (*continue as in the ordinary condition No. 4, p. 195, ante*).

5. The abstract of title [to Lots] is to commence with an indenture dated the day of 18 [being a conveyance on a sale, *or* being a mortgage, *or* the lease or underlease under which the vendor holds (a).]

As to commencement of title.

(a) This condition is necessary where the abstract commences less than forty years before the day of sale (see V. & P. Act, 1874, s. 1), and is advisable in all cases, see second note to C. A. s. 3 (3), and also p. 187, *ante*. If the deed stipulated as the commencement of the abstract contains recitals, s. 3 (1) of the Conveyancing Act prevents any requisition upon them. Where the deed commencing the abstract is a purchase deed or mortgage deed, it is advisable so to describe it, as being obviously a better commencement of title than a will or settlement, and where the document commencing the abstract is a voluntary settlement, or other document not forming in itself a good root of title,

Where root of title bad.

- Will. 6. The abstract is to commence with the will, dated the day of of a testator who died on the day of , and it is to be assumed that the testator was entitled in fee simple free from incumbrances at [the date of his will and thenceforth up to (a)] his death, and no evidence on this point shall be required.
- Enfranchised copyholds. 7. As to Lot , which was formerly copyhold of the manor of , the abstract of title to the former copyhold interest is to commence with a surrender and admittance on a purchase in the year , and the title to the freehold is to commence with the deed of enfranchisement, dated in the year (b).
- As to distinguishing titles. 8. The vendor is not to be required to distinguish the parts of any lot held under different titles, nor to distinguish the freehold from the copyhold part of the property [any lot], nor to distinguish copyholds of different manors.
- As to discrepancy in measurements. 9. No objection or requisition is to be made in consequence of any discrepancy between the old and present measurements [of any lot].
- Where documents subsequent to commencement of title cannot be produced. 10. If any document, dated years or upwards prior to the day of sale be not in the vendor's possession, and the possessor thereof is either unknown or refuses production, the recital of that document contained in any deed dated years or upwards prior to the day of sale is to be taken as conclusive evidence of the material contents and due execution thereof, and no further evidence, whether by production of the original or other-
-
- Title too short. the nature of the document should be stated in all cases: *Re Marsh & E. Granville*, 24 Ch. D. 11. On a sale by trustees a condition limiting the title unnecessarily is depreciatory: *Dunn v. Flood*, 25 Ch. D. 629.
- (a) The words in brackets are not required where the will is dated after 1837. If the will mentions the property, the condition may state that the will "specifically devises the property," or "contains a general devise of all the testator's property in the parish of," &c. A devise of this kind affords some evidence of the testator's title.
- (b) Under s. 3 (2) of the Conveyancing Act the purchaser is not to call for the title to make the enfranchisement.

wise, is to be required of the contents of that document (a).

10a. The vendor is not to be required to procure the production, or trace or state who has the custody of any document not in his possession, or to furnish any abstract or copy thereof, or to give any information relating thereto not within his knowledge.

11. Where it is provided in the particulars that the purchaser of any lot is to take an assignment of the lease of that and other lots and grant underleases of such other lots to the purchasers thereof, the assignments and underleases are to be made and granted accordingly, and each underlease and a counterpart thereof for delivery to the lessor are to be prepared, engrossed, and stamped by and in all respects at the expense of the purchaser, who is to be lessee thereunder, and are to be executed by the lessor and lessee respectively, and to contain all proper covenants by them having regard to the form of the principal lease out of which the underlease is to take effect, and the lessor is to give to the underlessee an acknowledgment of his right to production and delivery of copies of the principal lease and of any documents of title relating thereto retained by the lessor, and also an undertaking for safe custody thereof. In case there should be no purchaser at this sale to take an assignment of the principal lease the grant of any underlease may be suspended until the principal lease is assigned to a purchaser, or the vendor may at his option in the meantime grant any underlease. In case any difference should arise as to the form of any underlease or otherwise as to the grant thereof under this condition, or as to the payment of any costs or expenses connected therewith, or in case any other difference or question should arise as to the mode of giving effect to this condition or any matter arising thereout, such difference or question is to be settled by [*in sales by the Court the Judge at Chambers, otherwise some person to be named, or by arbitration as in No. 43, post*].

On a sale of lots held under one lease sub-demises being made by one purchaser to the others.

(a) Where documents are in the hands of mortgagees, see condition 15.

Bare legal estate.

12. Any bare outstanding legal estate (a) which a [the] purchaser may require to be got in is to be got in [and the title thereto traced] by him and at his own expense.

Tithes.

13. The rectorial tithes on the property were merged in the year . The abstract of title thereto is to commence with an indenture dated the day of , and the purchaser is not to require the production of the original nor any abstract or copy of the grant from the Crown of these tithes, nor any information as to the date of such grant, or otherwise with reference thereto.

Repair of chancel.

13a. The vendor is not to be required to furnish any evidence that the rectorial tithes are not subject to the repair of the chancel of the parish church, and the purchaser is to take subject to such liability (if any) as exists in respect to such repair.

Crown grant of tithes.

14. The purchaser is not to require production of the original nor any abstract or copy nor any other evidence of or information with respect to the grant from the Crown of the tithes. [Add if required, nor any evidence that the tithes are not, &c., continue as in the preceding condition.]

Definition of bare legal estate.

(a) i.e. a legal estate outstanding in a bare trustee who in reference to the V. & P. A. is defined to be a trustee to whose office no duties were originally attached, or who although such duties were originally attached to his office would, on the requisition of his *cestuis que trust*, be compellable in equity to convey the estate to them or by their direction and has been requested by them so to convey it: Dart, 517, 5th ed.: and see *Morgan v. Swansea Urban Sanitary Authority*, 9 Ch. D. 582, 585, per M.R.; but in the opinion of V.C. Hall the words "has been requested by them so to convey it" are not a necessary ingredient in the definition of a bare trustee: *Christie v. Ovington*, 1 Ch. D. 279. A trustee with a beneficial interest in the trust estate is not a bare trustee within the Land Transfer Act, 1875, s. 48, which replaced s. 5 of the V. & P. A. (*Morgan v. Swansea, &c., Authority, ubi sup.*); nor is the husband of a married woman who is seised in her right a bare trustee within the Act 3 & 4 Will. 4, c. 74, s. 34 (*Keer v. Brown*, Johns, 138).

When devolution need not be shewn in the abstract.

It is not necessary that the abstract should shew the devolution of the legal estate, if it shews a good equitable title in the vendor, with power to get in the legal estate under the Trustee Acts or otherwise: *Camberwell Building Society v. Holloway*, 13 Ch. D. 754.

15. The documents relating to Lots to inclusive, some of which include all or several of these lots, are now in the hands of the mortgagees and shall not be required by any purchaser of these lots to be produced or delivered over until the mortgages are redeemed, and if any purchaser of any of such lots requires his abstract to be verified he shall be bound himself at his own cost to obtain production of any documents in the possession of the mortgagees, and if he cannot obtain such production shall accept such verification of the abstract as the vendor is able to furnish, and shall bear all expenses incurred in obtaining production or consequent on production of such documents (a).

Production of documents in the hands of mortgagees.

16. All exchanges and allotments made more than years before the day of sale under any Enclosure Act or award, are, unless the contrary appears, to be deemed duly made in respect of the title under which the lands taken in exchange or on allotment appear by the abstract or otherwise to have been since held, and no requisition or objection is to be made in respect of any such exchange or allotment, or in respect of the title to the land given in exchange, or in respect whereof the allotment was made.

Allotments and exchanges under Enclosure Acts.

17. The lease being at a nominal rent, the mere fact of possession under it at the time of completion of the purchase shall be accepted as sufficient evidence of due performance of the lessee's covenants up to that time.

Covenants in lease at a nominal rent.

18. Where any mortgage has been made to the trustees of a Building [Friendly] Society, and a receipt for the money secured appears to be endorsed on the mortgage deed, and purports to be signed by trustees [and countersigned by a secretary] of the society the purchaser is to assume that the persons so signing were at the time of signing the duly appointed trustees [and secretary respectively] of the society, and accordingly that the receipt operated as a complete release and reconveyance

Building and Friendly Society mortgages.

(a) See other conditions as to production of documents, *supra*, Nos. 10 and 10a, and *infra*, No. 50.

of the mortgaged property, and is not to make any requisition, objection, or inquiry in reference to the appointment of the trustees or secretary, or the constitution of the society (a).

Dower.

19. It is to be assumed that no wife or widow of any former owner is entitled to dower or freebench, unless it appear on the abstract that he was married (b).

Origin of quit rents.

20. No information is to be asked for, nor is any other inquiry to be made as to the origin or creation of any quit, fee-farm, or chief rent, whether mentioned in the particulars or not.

Recitals evidence.

21. Every recital or statement contained in any deed or other instrument dated years or upwards prior to the day of sale, is to be accepted as conclusive evidence of the matter or fact recited or stated (c).

Unstamped documents.

22. No objection is to be made on account of any document [dated years or upwards prior to the day

Friendly and Building Society receipts.

(a) This condition with the words in brackets applies to Friendly Societies, 38 & 39 Vict. c. 60. s. 16 (7). Without the words in brackets, it applies to Building Societies, but only to those established under the Act 6 & 7 Will. 4. c. 32 (see s. 5) whose mortgages were made to trustees. If the society has been established under the Building Societies Act, 1874 (37 & 38 Vict. c. 42), it is a corporation (see s. 9), and the mortgage is made to the corporation. If a society established under the previous Act has obtained a certificate of incorporation under the Act of 1874 (see s. 7), then (see s. 27) the securities and property become transferred from the trustees to the corporation. In either of these cases the receipt (see s. 42) will be under the seal of the corporation and proves itself, and the person countersigning would be assumed to be the proper officer as described, so that no special condition would be necessary.

As to the effect of the endorsed receipt, see *Pease v. Jackson*, L. R. 3 Ch. App. 576; *Sangster v. Cochrane*, 28 Ch. D. 298, and cases there discussed; *Harvey v. Municipal Permanent Investment B. S.*, 26 Ch. D. 273.

(b) This condition is only necessary in case of an intestacy, or of a person of an age to have been married on or before 1st January, 1834.

(c) This condition is only required where the recital is contained in an instrument dated within twenty years (see V. & P. A. 1874, s. 2).

Depreciatory conditions on sale by trustees.

On a sale by trustees a condition unnecessarily restrictive as to recitals is depreciatory: *Dunn v. Flood*, 25 Ch. D. 629.

of sale] being unstamped or not sufficiently stamped (a) [if any such there be, of which, however, the vendor has no knowledge], and any document which [the] any purchaser shall require to be stamped or further stamped shall be procured to be so stamped by him and at his expense.

23. No objection is to be made on account of any document [dated years or upwards prior to the day of sale] being unstamped or insufficiently stamped (a) or not being registered in the Deeds Registry, and any document which the [any] purchaser may require to be stamped or further stamped or registered shall be procured to be so stamped or registered by him and at his expense.

Unstamped or
unregistered
documents.

24. It is to be assumed that every surrender or admittance pursuant to power of attorney was authorized by the power under which it appears on the court rolls to have been made, and production of the power is not to be required.

Power of
attorney to
surrender
copyholds.

25. If the balance of the purchase and valuation money [for Lot] should be paid before the day of next the purchaser [of that lot] is to be let into possession [thereof] as a going concern on that day, and on and from that day is to become liable to discharge and shall discharge all wages and other outgoings connected with the business, and is to indemnify the vendor against all liabilities and outgoings of the business as from that day; but if for any reason possession [of Lot] is not delivered to the purchaser on the day aforesaid, the business on and from that day is to be carried on by or under the direction of the vendor, at the risk and cost but for the benefit of the purchaser thereof until possession is delivered to him. And any question which may arise as to the balance due to or from the purchaser in respect of the business, and any other

Sale of business
as a going
concern.

(a) In the absence of a condition to the contrary, a purchaser is entitled to have an insufficiently stamped mortgage deed properly stamped at the vendor's expense, although the mortgagor concurs in the conveyance: *Whiting to Loomes*, 14 Ch. D. 822; 17 *ib.* 10. But see *Ex parte Birkbeck Freehold Land Society*, 24 *ib.* 119.

Stamp

question which may arise in reference to the carrying on the same, is to be settled or decided [*in case of sale by the Court by the judge at chambers or*] by the arbitration of, &c. [*See special condition No. 43 as to appointment of arbitrators and umpire.*]

Mortgage term by sub-demise the sale being made by purchasers from the mortgagees.

26. By deed dated the day of the property was sub-demised by way of mortgage for the residue, except the last days, of the term granted by the lease mentioned in the particulars, and the term so created was sold by the mortgagees under a power in the deed. [(a) The power contains a provision that after a sale the mortgagor should stand possessed of the principal term for which the lease was granted in trust for the purchaser, and the benefit of this trust is included in the present sale.] The purchaser at this sale is to have an assignment from the vendor of the mortgage term only, and is not to require the vendor to procure any assignment of the principal term, nor to require him to shew in whom this principal term is now vested; and any assignment or vesting order, and all information and evidence requisite to procure an assignment or vesting order for the purpose of getting in the principal term, is to be searched for and obtained by and at the expense of the purchaser.

Mortgage term by sub-demise sold by mortgagees.

27. By the mortgage deed under which the vendor [s] sell[s] the premises were demised for the residue except the last days of the principal term granted by the lease mentioned in the particulars (b). By the deed the mortgagor is constituted a trustee of the premises for the residue of the term granted by the lease in trust to assign and dispose of the same as the persons entitled to the mortgage money shall direct, and contains a [an irrevocable] power of attorney to assign the term. The

(a) If the power does not contain the clause here referred to, the words in brackets must be omitted. As to the statement in the particulars of the length of the term sold, see n. to next condition.

(b) The particulars must state the term sold as being the residue less the specified days of the term granted by the original lease. See Preced. xvi. of a mortgage to which the condition in the text is applicable.

purchaser is to be entitled to the benefit (to be enforced or obtained at his own expense) of the trust, and to an assignment of the principal term under the power if and so far as the power is available, but shall not require it to be shewn that the power is now available, nor make any objection on account of its not being available.

28. An abstract or copy of the lease [*or underlease*] creating the term sold as mentioned in the particulars can be inspected at during a period of fourteen days prior to the day of sale or in the sale-room at the time of sale; and the purchaser is to be deemed to have notice of all the contents thereof, and such notice shall not be affected by any partial or incomplete statement of those contents in the particulars or these conditions [*add in case of an underlease*, and no inquiry is to be made as to the contents of the superior lease].

Contents of
lease or under-
lease.

29. The lease [*or underlease*] contains a restriction on assignment without license. The purchaser is immediately after the sale to apply for and endeavour to obtain the necessary license and to perform any reasonable condition required by the landlord previous to granting it, and if unable to obtain it within weeks from the day of sale the contract for sale shall be rescinded by the vendor in the same manner and upon the same terms as if the purchaser had made and insisted on a requisition which the vendor is unable to comply with.

Where there is
a covenant not
to assign.

30. It is believed that every lot held by underlease is so described in the particulars, but if any lot described as held by lease should appear to be held by underlease the purchaser thereof is not to make any objection on this account, nor claim any compensation on the ground of misdescription (*a*).

Provision for
underleases
described as
leases.

(*a*) A purchaser is not bound to take a title by underlease instead of lease: *Madeley v. Booth*, 2 De G. & S. 718; unless the particulars and conditions are sufficient to give him notice to the contrary: *Camberwell Building Society v. Holloway*, 13 Ch. D. 754. An underlease may generally be known by its being for a term less a few days, or by the rent being reserved to or the covenants being entered into with the executors and administrators, and not the heirs.

As to covenants
where lease-
holds subject
to underleases.

31. No objection shall be made on account of the covenants by the tenant in any underlease not corresponding with the covenants by the lessee in the lease under which the property is held (a).

Contents of
tenants' leases.

32. Counterparts or copies of the leases or of the agreements (if in writing) under which the tenants hold can be inspected at during a period of fourteen days prior to the day of sale or in the sale-room at the time of sale, and the [each] purchaser is to be deemed to have notice of and to take subject to the terms of all the existing tenancies, whether arising during the continuance or after the expiration thereof, and such notice shall not be affected by any partial or incomplete statement in the particulars with reference to the tenancies (b).

Leases by
mortgagor
alone.

33. No objection is to be made on the ground that any lease or agreement for tenancy was made or entered into by a mortgagor without the concurrence of his mortgagees (c).

Benefit of fire
insurance.

33a. If any buildings on the property [or on Lot] should be destroyed or damaged by fire before the day fixed for the completion of the purchase, or subsequently while any insurance against fire subsists thereon in favour of the vendor, the purchaser is to be entitled to the benefit of such insurance upon paying the vendor the amount of the last premium paid thereon (d).

Easements,
tenancies,
fences, &c.

34. The property is [or the several lots are] sold subject to all quit, chief and other rents, rights of way,

(a) As to the risk incurred where these covenants do not correspond, see 4 Jarm. & By. Conv. 514.

(b) The purchaser is not bound to ascertain from a tenant the terms of his tenancy: *Caballero v. Henty*, L. R. 9 Ch. App. 447.

(c) As to this, see now the C. A. s. 18 (1) (16), notwithstanding which the condition will always be necessary where the lease is not authorized by that section or by agreement.

(d) In the absence of an express contract the purchaser is not entitled to the insurance money: *Rayner v. Preston*, 14 Ch. D. 297; 18 Ch. D. 1. But if the vendor has received it and not applied it in restoring the buildings the insurers may recover it back: *Castellain v. Preston*, 11 Q. B. D. 380.

light, and other easements (if any (a)), affecting the same, and to any subsisting liability under enclosure award, covenant, or otherwise, to repair the fences, roads, or streets, and to the rights of the tenants to fixtures (if any), or to their statutory rights; [and the purchaser is to be deemed to have notice of the terms upon which all the tenants hold (b).]

35. The several purchasers shall take their conveyances subject to the apportioned rents stated in the particulars, and shall not require the assent of any tenant thereto, nor otherwise require such rents to be legally apportioned.

Apportioned
tenants' rents.

36. Where any lots are held or are to be assigned at apportioned rents, the several purchasers shall accept their assignments at or subject to such apportioned rents, and shall not require the consent of the landlord to be shewn or to be obtained to the apportionment, nor require the rents to be otherwise legally apportioned.

Apportioned
rents of lease-
holds.

37. The vendor is not to be required to obtain the apportionment of any land tax or tithe rent-charge.

Apportion-
ment of land
tax and tithe
rent-charge.

38. Freedom from land tax or tithe rent-charge is to be deemed sufficiently evidenced by the fact that the land-tax assessment books or the tithe commutation award, as the case may be, do not shew any land tax or tithe rent-charge to be payable [but the purchaser is to be furnished at his own expense, if he so require, with a statutory declaration that no land tax or tithe rent-charge has been paid for twelve years next before the day of sale (c)].

Freedom from
land tax and
tithe rent-
charge.

39. Part of the property [Lots and , or parts thereof,] was [were] demised with other land for a term of 500 years from, &c., 1790, by an indenture dated, &c., and this term, so far as regards the part now offered for

Enlargement
of long term
into fee simple.

(a) Any unusual easement should be disclosed: *Heywood v. Mallalieu*, 25 Ch. D. 357.

(b) Condition No. 32 should be used where there are any leases or agreements in writing with the tenants. See n. to that condition.

(c) This last paragraph should only be inserted when it is possible to obtain the required statutory declaration.

sale of the premises comprised therein, has been enlarged into a fee-simple, but the vendor[s] has [have] not the original, or any copy of the indenture of demise, nor any information relating to it other than such as appears on the abstract, and it shall be assumed unless the contrary appears that the term has been duly enlarged into a fee simple.

Identity.

40. No further or other evidence is to be required of the identity of the property [*or* lot or lots] described in the particulars with the property to which title is shewn by the abstract besides such evidence (if any) as may be gathered from the descriptions in the documents abstracted; [but the [any] purchaser is to be furnished at his own expense, if he so require, with a statutory declaration [by the vendor or some other person] that the property has [*or* lot or lots have] for twelve years prior to the day of sale been held and enjoyed in accordance with the title shewn thereto (a)].

Covenant by
vendor as
mortgagee or
trustee.

41. The vendor, being a mortgagee [*or* a trustee *or* an executor], is to be required to give only the statutory covenant implied by reason of his being expressed to convey as mortgagee [*or* trustee *or* personal representative], and no other covenants for title shall be required (b).

Where vendor
is tenant for
life.

41a. The vendor sells and will convey as a tenant for life under the Settled Land Act, 1882, the trustees for the purposes of the Act joining in the conveyance only for the purpose of acknowledging the receipt of the purchase-money, and [a] the purchaser is not to require any covenant except the statutory covenant implied by the vendor conveying as beneficial owner, with a proviso limiting the same so far as regards the reversion or remainder expectant on his life estate, and the title to

(a) This last paragraph should only be inserted when it is possible to obtain the required statutory declaration.

(b) Where the vendor is a trustee selling at the request of the tenant for life the latter must covenant for title, unless the contrary is clearly expressed in the contract: *Re Sawyer & Baring's Contract*, W. N. 1884, p. 192.

and further assurance of the premises after his death, to the acts and defaults of himself and his own heirs and persons deriving title under him or them.

42. No release by a separate instrument of any incumbrance shall be required, nor shall any objection be made on the ground of expense or otherwise to any incumbrancer joining in the conveyance to the [any] purchaser.

Incumbrancers not to be required to release by separate instrument.

43. Measurements and quantities of land are to be deemed correct and are not to be the subject of compensation if incorrect. In other respects any incorrect statement, or any error or omission which may be discovered in the particulars or conditions of sale affecting the nature or value of the property [any lot] is not to annul the sale, but if pointed out before completion (a) the vendor or the purchaser, as the case may be and require, is to pay or allow compensation on account thereof, and the amount in case of dispute is to be settled by the arbitration of two referees, one to be appointed by the vendor, and the other by the purchaser, or by an umpire to be appointed by the two referees before they proceed on the reference, and the decision of the referees, if they agree, or of the umpire, if they disagree, is to be conclusive [or where sale is under the Court is to be settled by the Judge at chambers] (b).

Errors in description (compensation).

(a) As to the importance of providing that the error be pointed out before completion: see *Bos v. Helsham*, L. R. 2 Ex. 72, 77. Where there was no such provision, compensation was allowed after conveyance in *Bos v. Helsham*, *ubi. sup.*; *Cann v. Cann*, 3 Sim. 447; *In re Turner & Skelton*, 13 Ch. D. 130; *Palmer v. Johnson*, 12 Q. B. D. 32, affirmed 13 Q. B. D. 351; *Perrian v. Perrian*, W. N. 1884, p. 5, but was refused in *Manson v. Thacker*, 7 Ch. D. 620; *Ailen v. Richardson*, 13 Ch. D. 524 (both which cases seem now overruled); and *Jolliffe v. Baker*, 11 Q. B. D. 255 (where there was no condition in the contract and merely a verbal representation as to quantity and no fraud).

Compensation after conveyance.

(b) This condition, when used by trustees or mortgagees, cannot be enforced against them to the injury of the beneficial owners where the misdescription arises from negligence: *White v. Cuddon*, 8 Cl. & Fin. 766, 787. But its use is not depreciatory: *Hobson v. Bell*, 2 Beav. 17, 24.

Offer by trustees, &c., of compensation for misdescription.

Errors in
description
(no compensa-
tion).

44. The property is [several lots are] believed to be and is [are] to be taken as correctly described [and is sold subject to all easements affecting the same (a)] and any incorrect statement, error, or omission found in the particulars or conditions is not to annul the sale nor entitle the [any] purchaser to be discharged from his purchase, nor is the vendor or [any] purchaser to claim or be allowed any compensation in respect thereof (b).

Documents,
where retained
by vendor as
beneficial
owner.

45. The vendor is to retain all documents relating to any property not comprised in this sale, and to give, at the cost of any purchaser requiring it, a statutory acknowledgment of the right of the [each] purchaser to production of documents so retained, and to delivery of copies thereof, and also a statutory undertaking for safe custody thereof.

Where retained
by vendor as
mortgagee or
trustee.

46. The vendor is to retain all documents relating to any property not comprised in this sale, and to give, at the cost of any purchaser requiring it, a statutory acknowledgment of the right of the [each] purchaser to production of documents so retained, and to delivery of copies thereof, but being a mortgagee [or trustee] is not to be required to give any undertaking or covenant for safe custody thereof (c).

Documents,
where de-
livered to
purchaser.

47. After the sale of all the lots, or of all the lots to which any set of documents relates, as the case may happen, the purchaser whose purchase-money is largest is to be entitled to the custody of such documents in the possession of the vendor as relate to any other lot as well as the lot or lots purchased by that purchaser [and do not relate to any other property besides that comprised in this sale], but in respect of documents delivered to him which relate to the lot or lots of any other

(a) Omit these words where condition No. 34 is used.

(b) This condition is convenient in cases of houses or small plots of land.

(c) A mortgagee or trustee may safely give an acknowledgment of the right to production and delivery of copies, as it only binds him to produce while he has possession, C. A. s. 9 (2), and to this he cannot reasonably object.

purchaser is to give to that other purchaser, if he so require, a statutory acknowledgment of his right to production and to delivery of copies thereof, and also a statutory undertaking for safe custody thereof. If any lot be not sold the vendor may until sale thereof retain all documents relating thereto, and in respect thereof or of any other documents retained by the vendor he is to give to any purchaser who may so require the before-mentioned statutory acknowledgment and [*or but not the (a)*] undertaking, and every acknowledgment [*or undertaking*] given under this condition is to be prepared and approved on behalf of all parties thereto at the expense of the person to whom it is given.

SECT. III.

SPECIAL CONDITIONS APPLICABLE TO SALES UNDER
THE COURT.

48. All facts or matters appearing to be proved or to be certified by the chief clerk (*b*), or to be stated in any judgment or order in the action [proceedings] in which this sale is made are to be deemed thereby sufficiently and conclusively evidenced, and the purchaser is to assume that all necessary and proper consents preliminary to a sale have been obtained (*c*), and is not to require the concurrence in his conveyance of any persons beneficially interested whose rights appear to be bound by the judgment or order under which the sale is made (*d*).

Certificates,
proofs in pro-
ceedings, &c.,
to be evidence.

(*a*) These words in brackets apply in case of a mortgagee or trustee selling.

(*b*) Where the sale is made under an order of a Judge of County Courts, say "Registrar" instead of "chief clerk."

(*c*) It may be as well to insert these words as to consent, though they scarcely seem necessary now, having regard to C. A. s. 70; see note to s. 70 of the Act, *ante*.

(*d*) These words as to the concurrence of persons beneficially interested are convenient but not necessary. The complete title is obtained by a conveyance of the legal estate and a good discharge for the purchase-money. Consequently in sales by the Court, the only

Legal estate
and discharge
for purchase-
money make
a good title.

Reservations
how to be
provided for.

49. Where a lot is sold subject to or with a reservation of any right, effect shall (in case of difference) be given thereto in such manner and at the expense of such persons as the Judge may direct (a).

Production of
documents in
hands of
mortgagees.

50. The documents relating to Lots are in the hands of mortgagees, and production thereof is not to be required until the mortgages are satisfied (b). If a purchaser of any of these lots require his abstract to be verified, he is himself at his own cost to obtain production of documents in the possession of any mortgagee, and if he cannot obtain such production, is to accept such verification of the abstract as the vendor is able to furnish, and is to bear all expenses incurred in obtaining or consequent on production of such documents.

As to applica-
tion of money
in discharge of
incumbrances.

51. The sale is made for payment of incumbrances affecting all or some of the lots. Each purchaser is, notwithstanding these incumbrances, to pay his whole purchase-money into Court, as provided by these conditions, to form a common fund to be applied under the direction of the Court in payment of these incumbrances, and is not, after having accepted the title to any lot purchased by him, to object [to the setting apart out of the common fund of money to answer the claim of incumbrancers having priority over the interests of the parties to the action, and not consenting to the sale,

necessary party to the conveyance is the person having, or enabled to convey, the legal estate; as for instance, a mortgagee or trustee, or a person appointed by the Court to convey. The discharge for the purchase-money is obtained by payment into Court, and all equities are bound. But it often happens that a purchaser asks for the concurrence in the conveyance of persons having equitable interests, and it is convenient to be able to point to a condition expressly excluding his right to require their concurrence.

(a) The order of the Judge settling the form of conveyance is subject to appeal: *Pollock v. Rabbits*, 21 Ch. D. 466.

(b) This can be done under s. 5, the C. A. out of the purchase-moneys when paid into Court (note on that section, *ante*). Where the mortgages are subsequent to 1881, and come within s. 16 of the C. A., this condition is unnecessary; the mortgagor can procure production under that s., and the expense incurred falls on the purchaser, C. A. s. 3 (6).

nor (a)] to payment out of the [balance of the] common fund of the amount due to any incumbrancer consenting to the sale, or otherwise bound by the order for sale.

52. The conveyance to the [each] purchaser is to be made either by a vesting order, or by a person appointed for the purpose by the Court, who is to be required to give only the statutory covenant implied by reason of his being expressed to convey under the order of the Court, and any vesting or other order required to enable a conveyance shall be obtained by the [each] purchaser at his own expense.

As to covenant
by person
appointed to
convey.

(a) The words in brackets should be omitted where there are no prior incumbrancers whose claims are to be satisfied by setting apart a fund under C. A. s. 5 (see note to that s. *ante*). Where there are such prior incumbrancers, the funds for them must be set apart first, otherwise there might not be sufficient to pay them, and the purchasers could not get their conveyances. It will be for the purchasers to see that there is sufficient set apart under s. 5 to answer prior incumbrancers. If there is, there can be no difficulty in completing. If there is not, the sale of all the lots must fail, as before the Act in the like case, and the order for sale must be contingent on this.

CHAPTER IV.

FORMS IN DEEDS AND WILLS.

SECT. I.

FORMS IN PURCHASE DEEDS.

PURCHASE
DEEDS.
No. 1.

Proviso re-
stricting the
covenant by
tenant for life.

PROVIDED ALWAYS that so far as regards the reversion or remainder expectant on the life estate of the said [*tenant for life*] in the premises hereby conveyed, and the title to and further assurance thereof after his death, the statutory covenant by him implied in these presents shall not extend to the acts or defaults of any person other than and besides himself and his own heirs and persons deriving title through or under him, them, or any of them (a).

No. 2.

Covenant by
purchaser of
leasehold to
pay rent, &c.

AND the said [*purchaser*] hereby (b) covenants with the said [*vendor(s)*] (c) that the said [*purchaser*] or the persons deriving title under him will henceforth from time to

(a) See Dart, V. & P. 548, 5th ed.

Heirs, exe-
cutors, &c.,
omitted of
covenantor;

(b) The heirs, executors, and administrators of the covenantor are bound without being mentioned, the heirs by C. A. s. 59, and the executors or administrators by the common law (Wms. Exors. 1728, 8th ed.). The assigns of the covenantor are not mentioned in this and similar covenants, *post*, because they are personal covenants. The mention of the assigns of the covenantor has no force, except in real covenants, the burden of which is intended to be thrown on the assignee of the land, as to which see note to C. A. s. 58, *ante*.

of covenantees.

(c) This covenant is by C. A. s. 58 (2) deemed to be made with the executors, administrators, and assigns of the covenantee. Where the covenant relates to lands of inheritance, it is deemed to be made with the heirs and assigns of the covenantee (subs. 1). Covenantee includes covenantees: see the second note to C. A. s. 50.

time duly pay all rent becoming due under the said lease, and observe and perform all the covenants and conditions therein contained, and henceforth on the part of the lessee[s] to be observed or performed, AND also will at all times hereafter save harmless and keep indemnified the said [*vendor(s)*] and his [their] estate and effects from and against all proceedings, claims, and expenses on account of any omission to pay the said rent or any breach of any of the said covenants and conditions.

PURCHASE
DEED.
No. 2.

AND the said [*vendor(s)*] hereby acknowledge[s] the right of the said [*purchaser(s)*] [and each of them] to production of the documents mentioned in the schedule hereto, and to delivery of copies thereof (a).

No. 3.
Acknow-
ledgment of
right to
production.

AND hereby undertakes for the safe custody thereof (b).

Undertaking
for safe
custody.

SECT. II.

FORMS IN MORTGAGES.

The said [*mortgagor*] hereby covenants with the said [*mortgagee(s)*] (c) to pay to him [them] on the _____ day of _____ next [*generally six calendar months from date of deed*] the sum of £ _____, with interest thereon in the meantime at the rate of _____ per cent. per annum, computed from the date hereof

MORTGAGES.
No. 4.
Covenant for
payment of
principal.

(a) This acknowledgment may safely be given by trustees or mortgagees. As to the obligations imposed by, and the rights under an acknowledgment, see C. A. s. 9 (1)–(8).

(b) As to the obligations imposed by, and the rights under an undertaking, see C. A. s. 9 (9)–(11).

(c) It is unnecessary to specify the “executors, administrators, or assigns” of the mortgagee. The right to sue on the covenant devolves on them without their being mentioned. By C. A. s. 60, where the covenant is with two or more, the payment is to be made to the person on whom the right to sue devolves; therefore it is unnecessary to mention the survivors or survivor of them. The same principle applies to the subsequent forms of covenant where there is any other act to be done.

Executors, &c.,
of mortgagees
omitted.

Survivors.

The real and personal representatives of the mortgagor are bound without being named: see p. 216, n. (b).

MORTGAGES. [In case of further advances add :

No. 4a. AND also within three calendar months from the day when any further money shall be advanced by or become due (other than for interest) to the said [mortgagee(s)] under these presents, to pay to him [them] the amount thereof, with interest thereon at the rate aforesaid from the day of the same being advanced or becoming due ;]

Further
advances,

No. 4b. AND also so long as any principal money shall remain due on the security of these presents (a) after the said day of , to pay to the said [mortgagee(s)] interest thereon at the rate aforesaid, by equal half yearly payments on the day of and the day of in every year.

and interest.

No. 4c. The said [mortgagors] jointly, and as separate covenants, every two and three [and so on] (b) of them hereby covenant and each of them hereby covenants with the said [mortgagee(s)] to pay to him [them], on the day of next the sum of £ with interest thereon, in the meantime, at the rate of per cent. per annum, computed from the date hereof. [Continue as in No. 4b.]

Joint and
several
covenants.

[To follow demise of leaseholds :]

No. 5. AND the said [mortgagor] hereby covenants with the said [mortgagee(s)] that the said [mortgagor] will henceforth stand possessed of the premises comprised in the said lease for the residue of the term thereby granted in trust for the said [mortgagee(s)] and to assign and dispose of the same as he [they] or the persons or person deriving title under him [them] shall from time to time direct,

Trust of
principal term
in mortgage
by sub-demise.

Merger of
debt in
judgment.

(a) A personal covenant to pay interest on the mortgage debt is merged in a judgment recovered by the mortgagee for principal and interest. He cannot then recover interest at a higher rate than 4 per cent. per annum : *Re European Central R. Co.*, 4 Ch. D. 33; *Re Sneyd*, 25 *ib.* 338. But *secus* where there is a distinct covenant to pay interest during the continuance of the security: *Popple v. Sylvester*, 22 Ch. D. 98.

(b) Though a covenant be only expressed to be several, or joint and several, a plaintiff may join as parties to the same action all or any of the covenantors : R. S. C. 1883, Order xvi. r. 6.

but subject to the proviso for redemption hereinafter contained (a). MORTGAGES.
No. 5.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said [*mortgagor*] hereby irrevocably nominates and appoints the said [*mortgagee(s)*] [and each of them] or [their or] his substitute or substitutes to be the attorneys and attorney of the said [*mortgagor*] for him and in his name and on his behalf and as his act and deed to sign, seal, and deliver and otherwise perfect any deed of assignment of the term granted by the recited lease, which may be required in order to vest in a purchaser or any other person the residue of the term granted by that lease (b). No. 5a.
Appointment
of mortgagee[s]
as attorney[s]
to assign
original term.

(That is to say.)—IT IS HEREBY PROVIDED AND AGREED that on payment on the day of next [*the day mentioned for payment of principal in Form No. 4*] by the said [*mortgagor*] or the persons deriving title under him to the said [*mortgagee(s)*] or the persons deriving title under him [them] of the sum of £ , with interest thereon in the meantime at the rate of per cent. per annum No. 6.
Proviso for
redemption of
freeholds and
leaseholds.

(a) This clause makes the mortgagor a trustee for the mortgagee on foreclosure as well as on sale. Where the mortgagor merely covenants to assign, it is questionable whether a vesting order can be obtained: *Re Property*, 22 L. J. Ch. 948. But now an irrevocable power of attorney to assign can be given under C. A. 1882, s. 8 (see Form No. 5a), which however would cease on the death of the person named attorney: and see Judicature Act 1884, 47 & 48 Vict. c. 61, s. 14.

(b) As this power of attorney is merely in aid of and incident to the security, it is considered that a further 10s. stamp is not necessary. Its object is to prevent the necessity for a vesting order under the last Form No. 5. The power being an authority coupled with an interest, even if not expressly made irrevocable, would be irrevocable while any money remains on the security: *Gaussen v. Morton*, 10 B. & C. 731; *Clerk v. Laurie*, 2 H. & N. 200, per Williams, J.; *Bromley v. Holland*, 7 Ves. 28. See Special Condition 27, *ante*, applicable to a sale under a mortgage containing Forms Nos. 5 and 5a. See also note to last form.

MORTGAGES.
No. 6a.

Further
advance.

[In case of further advances add :

And also of all other principal money (if any) advanced or to become due under these presents and interest thereon at the rate aforesaid from the day of the same being advanced or becoming due]

No. 6b.

The premises hereinbefore conveyed [demised] shall at the request and cost of the said [mortgagor], or the persons deriving title under him, be duly reconveyed [surrendered] to him or them (a).

No. 7.

Proviso for
redemption of
copyholds.

[To follow covenant to surrender copyholds:]

SUBJECT to a condition for making void the said surrender on payment on the day of next [the day mentioned for payment of principal in Form No. 4] by the said [mortgagor] or the persons deriving title under him to the said [mortgagee(s)] or the persons deriving title under him [them] of the sum of £ , with interest thereon in the meantime at the rate of per cent. per annum. [Add, if required, Form No. 6a.]

Charge on
copyholds.

AND the said [mortgagor] hereby covenants with the said [mortgagee(s)] that the premises hereinbefore covenanted to be surrendered shall henceforth stand charged with the payment of all moneys hereby secured: And that until surrender the said [mortgagor] and all persons deriving title under him will stand possessed thereof upon trust for the said [mortgagee(s)], and to dispose of the same as he [they] or the persons deriving title under him [them] shall direct (b).

No. 8.

Covenant to
keep up Life
Policy.

AND the said [mortgagor] hereby covenants with the said [mortgagee(s)] in manner following, that is to say, that so long as any money remains due under these

(a) The proviso for redemption may be shortened by reference to the covenant for payment, but it is more convenient that the proviso should be complete in itself.

(b) This covenant operates as a charge which enables a sale under the statutory power of sale. The statutory power of sale is conferred only under a mortgage or charge by deed: C. A. s. 19, and s. 2 (vi.). The legal estate must be got in under the Trustee Acts or otherwise.

presents the said [*mortgagor*] will not, without giving notice in writing to the said [*mortgagee(s)*], go beyond the limits (a) permitted by the policy[ies] hereby assigned, or any new policy to be effected as hereinafter provided, and will not do or permit anything whereby any such policy may become void or voidable, or whereby the said [*mortgagee(s)*] may be prevented from receiving or recovering any money thereby assured; And that the said [*mortgagor*] will immediately, at his own cost, in case any such policy should become voidable, do all things necessary for restoring the same; And in case any such policy should become void, also do and furnish all acts, certificates, and things necessary or proper to enable the said [*mortgagee(s)*] to effect a new policy on the life of the said [*mortgagor*] in the name(s) of the said [*mortgagee(s)*] (b) for the amount which would have become payable under the void policy if it had remained in force and the said [*mortgagor*] had died; And that every such new policy, and the money payable thereunder, shall be subject to the like right of redemption, and be held and applied in like manner as the policy[ies] hereby assigned and the money payable thereunder; And further, that the said [*mortgagor*] will during the continuance of the present security duly pay every sum from time to time payable for keeping on foot every policy for the time being subject to this security, and will make each such payment within three days after the first day on which it becomes payable, and will forthwith deliver the receipt for [or other satisfactory evidence of (c)] every such payment to the said [*mortgagee(s)*]; and that in default the said [*mortgagee(s)*] may pay every such sum, and the said [*mortgagor*] will

(a) Going beyond limits would not make a policy void if the proper additional premium be paid, but might throw an additional charge on the mortgagee.

(b) The addition of the survivors or survivor, or of any other person to whom the right to sue on this covenant devolves, is not necessary, see C. A. s. 60.

(c) If the mortgage is not a first mortgage the receipts may have to be delivered to the first mortgagee.

MORTGAGES.
No. 8.

repay to the said [*mortgagee(s)*] all sums so paid, and all costs and expenses incurred in restoring any voidable policy or in effecting any new policy or otherwise in relation to the premises, with interest for the same at the rate of per cent. per annum from the time of each payment; And until repayment, the premises hereinbefore conveyed [demised and assigned], and every new policy to be effected as aforesaid, shall stand charged with the amount so to be repaid and the interest thereon.

No. 9.
Covenant to
keep up Fire
Insurance.

AND the said [*mortgagor*] hereby covenants with the said [*mortgagee(s)*] that so long as any money remains due under these presents the said [*mortgagor*], or the persons deriving title under him, will insure and keep insured all buildings upon the premises hereby conveyed [demised] against loss or damage by fire, in at least the sum of £ [*or*, a sum equal to three-fourth parts of the amount required to rebuild the same in case of total destruction], and will pay every sum from time to time payable for keeping on foot every such insurance within three days after the first day on which it becomes payable, and will forthwith deliver [*or*, will from time to time when required produce] to the said [*mortgagee(s)*] the policy or policies of insurance [*or* other proper evidence of the subsistence thereof], and also when required deliver to him [them] the receipt for [*or* other satisfactory evidence of payment of (*a*)] every sum payable as aforesaid and in default that the said [*mortgagor*] will repay to the said [*mortgagee(s)*] every sum which under the statutory power for the purpose may be expended by him [them], or persons deriving title under him [them], in keeping the said buildings insured to the amount aforesaid, with interest thereon at the rate of per cent. per annum from the time of each payment (*b*); AND IT IS HEREBY AGREED that the covenant as to insurance hereinbefore

Covenant to
satisfy statu-
tory right.

(*a*) The receipts may have to be delivered to a prior mortgagee or some one else.

(*b*) C. A. s. 19, gives the mortgagee a charge for the amount paid and interest.

contained shall so long as the same is duly performed be in satisfaction of the statutory right of the said [*mortgagee(s)*] to effect and keep on foot Fire Insurances.

MORTGAGES.
No. 9.

AND the said [*mortgagee(s)*] hereby covenant(s) with the said [*mortgagor*] that if on each half-yearly day hereinafter fixed for payment of interest, while any principal money remains due under these presents, or within thirty days next after each of the said days respectively, there should be continuously paid to the said [*mortgagee(s)*] interest on such principal money at the rate of [*reduced rate*] per cent. per annum up to such half-yearly days respectively, [and there should not be any breach of any obligation, statutory or otherwise, binding on the said [*mortgagor*] (a), or of any of the covenants whether express or implied, herein contained and on his part to be observed or performed, other than and besides the covenant for payment of the principal money and interest hereby secured (b)], then the said [*mortgagee(s)*] will accept interest for the principal money so for the time being due at the rate of [*reduced rate*] per cent. per annum, so long as interest at that rate continues to be paid within the thirty days aforesaid (c).

No. 10.

Provision for
reduction of
interest, pay-
ment being
continuous.

AND the said [*mortgagee(s)*] hereby covenant(s) with the said [*mortgagor*] that if on each half-yearly day hereinbefore fixed for payment of interest, while any principal money remains due under these presents or within thirty days next after such day, there should be

No. 11.

Provision for
reduction of
interest from
half year to
half year.

(a) As for instance the obligation to deliver the counterpart of leases, C. A. s. 18 (8).

(b) This covenant is always broken. The words in brackets and similar words in Nos. 11 and 12 will only be inserted where the statutory power of leasing is not excluded, or where there is a covenant as to Fire Insurance, or Life Policies, or rent of leaseholds, or the like.

(c) There may sometimes be a doubt whether an omission to pay interest for one half year, within thirty days, puts an end to the right of reduction: see *Stanhope v. Manners*, 2 Eden, 197. In this form it does put an end to the right. See the next form, where the omission puts an end to the right for that half-year only.

MORTGAGES
No. 11.

paid to the said [*mortgagee(s)*] interest on such principal money at the rate of [*reduced rate*] per cent. per annum [and there should not be any breach of any obligation, statutory or otherwise, binding on the said [*mortgagor*] or of any of the covenants, whether express or implied, herein contained, and on his part to be observed or performed during the last current half-year other than and besides the covenant for payment of the principal money and interest hereby secured (a)], then and in respect of every half-year for which such interest shall be so paid the said [*mortgagee(s)*] will accept interest for the principal money so for the time being due at the rate of [*reduced rate*] per cent. per annum.

No. 12.

Agreement for
mortgage to
continue for
time certain.

AND the said [*mortgagee(s)*] hereby covenant(s) with the said [*mortgagor*] that if on each half-yearly day hereinbefore fixed for payment of interest, and continuously during the period of years from the date of these presents, or within thirty days next after each such day, there should be paid to the said [*mortgagee(s)*] interest on the principal money hereby secured at the rate of per cent. per annum up to that half-yearly day [and there should not be any breach of any obligation, statutory or otherwise, binding on the said [*mortgagor*] or of any of the covenants, whether expressed or implied, herein contained, and on his part to be performed or observed, other than and besides the covenant for payment of the principal money and interest hereby secured (b)], then the said [*mortgagee(s)*] or the persons deriving title under him [them] will not before the expiration of the said period of years require payment of the principal money hereby secured, or any part thereof (c):

AND the said [*mortgagor*] hereby covenants with the said [*mortgagee(s)*] that the whole principal money hereby

(a) As to these words in brackets, see note (b) to last form.

(b) As to these words in brackets, see note (b) to Form No. 10.

(c) As to waiver of the default in payment of interest, see *Langridge v. Payne*, 2 J. & H. 423; *Keene v. Biscoe*, 8 Ch. D. 201.

As to waiver
of default in
payment of
interest.

secured shall be allowed to remain on this security during the said period of years :

MORTGAGES.
No. 12.

PROVIDED ALWAYS and it is hereby agreed that notwithstanding the restriction hereinbefore contained on the right to require payment of principal money, but without prejudice to the covenant hereinbefore contained not to call in the same, such principal money shall be deemed to become due within the meaning of The Conveyancing and Law of Property Act, 1881, and for all the purposes of that Act on the day on which such principal money is hereinbefore covenanted to be paid (a).

FORMS EXCLUDING APPLICATION OF C. A.

AND IT IS HEREBY AGREED that section seventeen of the Conveyancing and Law of Property Act, 1881, shall not apply to these presents or the security hereby made.

No. 13.

Power of
consolidation
reserved.

AND IT IS HEREBY AGREED that section twenty of the Conveyancing and Law of Property Act, 1881, shall not apply to, &c., [*continue as in last form*] (b).

No. 14.

Power of
immediate
sale, &c.

AND IT IS HEREBY AGREED that the said [*mortgagor*] or any person deriving title under him shall not, except with the consent in writing of the said [*mortgagee(s)*] or the person or persons for the time being deriving title under him [them], exercise the powers of leasing or of agreeing to lease conferred by the Conveyancing and Law of Property Act, 1881, on a mortgagor while in possession, but it shall not be necessary to express such consent in any such lease or agreement (c).

No. 15.

Mortgagor not
to grant leases
without
consent.

(a) This clause seems required to prevent any question as to the date when the statutory powers of sale, &c., arise.

(b) A stringent clause of this nature must not be allowed without express instructions from the mortgagor : see *Cradock v. Rogers*, W. N. 1884, p. 166.

(c) As to the effect of entirely excluding the mortgagor's power of leasing, see note to C. A. s. 18, p. 65, *ante*. For agreements varying the powers of leasing of the C. A. and applying the powers of leasing in the Act to mortgages previously made, see Precedents XXVII and XXVIII., *post*.

SECT. III.

FORMS IN SETTLEMENTS.

SETTLEMENTS.
No. 16.Trust to sell
real estate.

UPON TRUST to sell (a) the said premises, but during the lives of the said [husband] and [wife] or the life of the survivor of them with their his or her consent in writing (b).

Attornment
clause not
advisable.

It is not advisable to insert an attornment clause in a mortgage deed having regard to the *dicta* in *Re Stockton Iron Furnace Co.*, 10 Ch. D. 356, 357, adopted by Jessel M.R., in *Ex parte Punnett*, 16 Ch. D. 226, 235, to the effect that it makes the mortgagee liable to account as mortgagee in possession, (but see *Stanley v. Grundy*, 22 Ch. D. 478). The clause was of little use unless the mortgage deed was registered as a bill of sale under 41 & 42 Vict. c. 31: see ss. 6, 10; *Connelly v. Steer*, 7 Q. B. D. 520; *Lyons v. Tucker*, ib. 523. A power of distress also was of little use unless it could be given by a registered deed.

Must be in
specified form.

But now every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given by way of security executed on or after the 1st November, 1882, must not only be registered but be also made in the form in the schedule to the Bills of Sale Amendment Act, 1882 (45 & 46 Vict. c. 43), ss. 8, 9, 10: *Davis v. Burton*, 11 Q. B. D. 537. A judgment appears now the only other security available against chattels.

Exercise of
powers by
executors or
administrators.

(a) The mode of selling is provided for by C. A. s. 35, the power to give receipts is conferred by s. 36. Words of survivorship are not necessary: s. 38; nor the word "assigns": see s. 31, under which new trustees have the same powers as the original trustees. In a conveyance of freeholds of inheritance the declaration of the use after the marriage should be to the trustees, their heirs and assigns, "Upon trust to sell," &c. The executors or administrators of the surviving trustee can then exercise all the powers of the original trustees: C. A. s. 30. In a conveyance of leaseholds for life or years determinable with life the habendum should be to the trustees, "their executors or administrators." Then the personal representatives of the surviving trustee can exercise all the powers. A discretionary power is only capable of being exercised by persons expressly mentioned, subject to these exceptions—that under the C. A. s. 30, the personal representatives to whom the estate devolves are made "heirs and assigns" for the purposes of all trusts and powers, and that a new trustee always has the powers of an original trustee: C. A. s. 31 (5).

Consent
to sale.

(b) Under S. L. A. 1884, s. 6 (1), the trustees may sell without any consent except a consent required by the settlement, unless the tenant

AND IT IS HEREBY AGREED that the trustees or trustee for the time being of these presents, hereinafter called the trustees or trustee, shall stand possessed of the net money to arise from any such sale (after payment thereof out of all costs incidental thereto) and also of the rents and profits of the said premises until sale, UPON the trusts and subject to the powers and provisions declared concerning the same by an indenture intended to bear even date with these presents, and to be made between, &c.

SETTLEMENTS.

No. 16.

Trust of
proceeds of
sale.

AND IT IS HEREBY AGREED that the said premises, or any part thereof, may be retained unsold as long as the trustees or trustee think proper, but shall be deemed personal estate and devolve as such [*add powers of leasing, and of appointing new trustees, Forms Nos. 38 and 46, post*].

Power to
postpone sale.

UPON TRUST with the consent of the said [*husband*] and [*wife*] during their joint lives and of the survivor of them during his or her life and after the death of the survivor at the discretion of the trustees or trustee for the time being of these presents hereinafter called the trustees or trustee, to invest the said money in the names or name of the trustees or trustee in manner following and not otherwise (a), that is to say,

No. 17.

Trust to
invest.

In any of the parliamentary stocks or public funds of Great Britain, or on Government or real securities in England or Wales, including the security of a term of three hundred years or upwards unexpired and not liable to be determined under a proviso for re-entry (b), or in the stock of the Bank of England or Metropolitan

No. 18.

Investment
clause.

for life has obtained and registered under s. 7 of the Act an order enabling him to sell.

(a) These words are to prevent loans on mortgage in Ireland under 4 & 5 Will. 4, c. 29, or investments authorised by local Acts of Parliament. They may be omitted where Form No. 19 is used.

Prohibition of
other invest-
ments.

(b) It seems that a long term is not now considered real security : *Re Boyd*, 14 Ch. D. 626 ; but see note to C. A. s. 65, p. 122.

Long terms not
real securities.

SETTLEMENTS.

No. 18.

Board of Works, or in or on the stock or securities of the Government of India for the time being, or the stock or securities not payable to bearer, [*or whether payable to bearer or not (a)*], of the Government of any British Colony or Dependency, or the preference or wholly or partially guaranteed stock or shares or the debentures or debenture stock of any railway company in Great Britain incorporated by special Act of Parliament, and having within one year before the date of investment paid a dividend on its ordinary stock or shares, or in or on the stock, shares, debentures or debenture stock of any railway company in India, the dividends or interest whereon are, is, or shall be wholly or partially or contingently guaranteed by the Government of India for the time being, or by the Secretary of State for India on behalf of such Government, with power for the trustees or trustee from time to time with such consent or at such discretion as aforesaid to change such investments for others of a like nature. [*Go to Form No. 20.*]

No. 19.

Large power
of investment.

In any of the parliamentary stocks or public funds of Great Britain, or on Government or real or leasehold securities in England or Wales, and in the case of leasehold securities without being bound to make any investigation of the lessor's title or being subject to any liability for omitting so to do, or on the security of any life interest in any real or personal property together with an insurance on the life, and so that any security taken under these presents may be either subject or not to any prior incumbrances, or in the stock of the Bank of England or Metropolitan Board of Works, or in or on the stock or securities of the Government of India for the time being, or the stock or securities (whether payable to bearer or not (*b*)), of the Government of any

(a) If the words in brackets are used the Form No. 44, *post*, enabling the trustees to deposit securities to bearer for safe custody, should be added.

(b) See last note.

British Colony or Dependency, or of any foreign government, state, or municipality, or the stock or shares, ordinary or otherwise, or the bonds, mortgages, debentures, or debenture stock of any railway, canal, dock, harbour, gas or water company, or other public company carrying on business in Great Britain or India, or any British Colony or Dependency, or the stock, bonds, or other securities of any municipal corporation or local or harbour authority or other public body in Great Britain or in any British Colony or Dependency, or of any incorporated company in Great Britain established for the purpose of investing money in the purchase or on mortgage of land in Great Britain or in any British Colony or Dependency, with power for the trustees or trustee from time to time with such consent, or at such discretion as aforesaid, to change such investments for others of a like nature.

SETTLEMENTS.
No. 19.

AND IT IS HEREBY AGREED that the trustees or trustee shall stand possessed of the said investments hereinafter called the trust fund, and the annual income thereof, upon the trusts and subject to the powers and provisions following, that is to say,

No. 20.
Trusts of
investments.

UPON TRUST to pay the annual income of the trust fund to the said [*wife*] during her life without power of anticipation during any coverture (*a*), And after her death to pay the said income to the said [*husband*] if he shall survive her during the residue of his life, And after the death of both IT IS HEREBY AGREED that the capital and income of the trust fund shall be held [*Form No. 24.*]

No. 21.
For wife for
life, then
for husband
for life.

(*a*) A trust or limitation for the separate use of a woman after 1882 is not necessary: see M. W. P. A. s. 2. But a restriction on anticipation, if desired, is allowed (s. 19), and is still necessary for the protection of the wife from marital influence. The restriction is applicable to income only, and therefore does not apply where the intention is clear that the married woman should have the capital: *O'Halloran v. King*, W. N. 1884, p. 178.

Restraint on
anticipation.

SETTLEMENTS.

No. 22.

Trust after
death of wife

UPON TRUST after the death of the said [*wife*] if the said [*husband*] should be then living, and should not be an undischarged bankrupt, or should not have executed, done, or suffered any act, deed, or thing, or if no event should have happened, whereby the trust next hereinafter declared would if subsisting be determined :

No. 22a.

for husband
until aliena-
tion (a),

Then to pay the annual income of the [*where the husband's trust fund and the wife's trust fund are settled, say wife's*] trust fund to the said [*husband*] during the residue of his life or until he attempts to alien, charge, or anticipate the same or any part thereof, or is adjudged a bankrupt, or takes proceedings for liquidation in bankruptcy, or makes any arrangement or composition with his creditors having the effect of a charge upon or alienation of the said annual income, or any part thereof, or until he does or attempts to do or suffers any other act or thing, or until any other event happens, whereby if the same income were payable to him absolutely for his life he would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the death of the said [*husband*], which first happens, the trust hereinbefore declared for payment to him of the said income is to determine ;

No. 22b.

then for him or
issue of mar-
riage, &c.

And if the same trust should fail or determine in his lifetime, then UPON trust during the residue of the life of the said [*husband*] to apply the annual income of

(a) This trust, when declared as to property settled by the husband, is void as against his creditors on bankruptcy (see note to *Wilson v. Greenwood*, 1 Swanst. 481), except to the extent of the fortune which on his marriage he received from his wife (*Lester v. Garland*, 5 Sim. 205), but is valid as against a mortgagee: *Brooke v. Pearson*, 27 Beav. 181; *Knight v. Browne*, 30 L. J. Ch. 649, 7 Jur. N.S. 894, in which latter report it is stated that the property in *Knight v. Browne* in fact belonged to the husband. *Phipps v. Lord Ennismore*, 4 Russ. 131, is explained in *Knight v. Browne*.

The discretionary trust in the text may be exercised so as to exclude the husband's creditors: *Holmes v. Penney*, 3 K. & J. 91.

For trusts where the husband's interest precedes the wife's, see *Preced. XXXA, post*.

the [*or the wife's*] trust fund for the maintenance and support or otherwise for the benefit of all or any one or more exclusively of the other or others of the said [*husband*] and the issue of the said intended marriage as the trustees or trustee in their or his sole discretion, without being liable to account for the exercise of such discretion, think fit, or if there should be no issue of the said intended marriage, or such issue should fail during the lifetime of the said [*husband*], Then for the maintenance, support, or otherwise for the benefit of all or any one or more exclusively of the other or others of the said [*husband*] and the person or persons who would if he were actually dead be entitled to the [*or the wife's*] trust fund, or the income thereof, as the trustees or trustee in their or his sole discretion, without being liable to account as aforesaid, think fit.

SETTLEMENTS.
No. 22b.

AND IT IS HEREBY AGREED that after the death of the survivor of the said [*wife*] and [*husband*] the capital and income of the [*or the wife's*] trust fund shall be held [*Form No. 24*].

AS TO THE HUSBAND'S TRUST FUND, Upon Trust to pay the annual income thereof to the said [*husband*] during his life, and after his death to pay the same income to the said [*wife*] during the residue of her life without power of anticipation,

No. 23.

Trusts of
husband's and
wife's funds.

Upon trust to pay the annual income thereof to the said [*husband*] during his life, or until he attempts to alien, charge, or anticipate the same or any part thereof, in any of which cases as well as on the death of the said [*husband*] which first happens the trust hereinbefore declared for payment to him of the said income, is to determine, And after the determination thereof, Then upon trust to pay the said income to the said [*wife*] during the residue of her life without power of anticipation, And if the said [*husband*] shall be living at her death, Then upon trust during the residue of the life of the said [*husband*] to apply the annual income of the husband's trust fund for the maintenance and support

No. 23a.

Income of hus-
band's trust
fund to him
until aliena-
tion, then to
wife.

SETTLEMENTS. [continue as in Form No. 22b, down to the end of that
 No. 23a. form, but describing the trust fund as the husband's and
 adding intestate after if he were actually dead].

No. 23b.
 Income of
 wife's trust
 fund to her,
 and annual
 sum to
 husband.

AND AS TO THE WIFE'S TRUST FUND, Upon Trust to pay the annual income thereof to the said [wife] during her life without power of anticipation during any coverture (a), and after her death out of the last-mentioned income to pay the annual sum of £ to the said [husband] during the residue of his life (b), the same to be deemed to accrue due from day to day, but to be paid by equal half-yearly payments, the first payment to be made at the end of six calendar months from the death of the said [wife] if the said [husband] should be then living :

No. 23c. AND IT IS HEREBY AGREED that the capital and income of the husband's trust fund after the death of the survivor of the said [wife] and [husband], and also the capital and income of the wife's trust fund after the death of the said [wife], and subject to setting apart a portion thereof, to provide for payment of the said annual sum of £ to the said [husband], if he should survive her, shall be respectively held

No. 24.
 Trusts for
 issue as
 husband and
 wife or the
 survivor
 appoint.
 In default for
 children.

IN TRUST for all or such one or more exclusively of the other or others of the issue of the said intended marriage, whether children or remoter issue (c), at such time and, if more than one, in such shares and with such gifts over, and generally in such manner for the benefit of such issue or some or one of them as the said [husband] and [wife] shall by deed, revocable or irrevocable, from time to time or at any time jointly appoint, And in default of and until and subject to any such appointment, then

(a) See note to Form No. 21.

(b) If the annual sum is to be made determinable on alienation, &c., Forms Nos. 22a and 22b can be adapted.

(c) It is not necessary expressly to restrict this power within the limits allowed by the rules against perpetuity: *Routledge v. Dorril*, 2 Ves. Jur. 356; *Attenborough v. Attenborough*, 1 K. & J. 296; but in any appointment made under it regard must be had to those limits as from the date of the settlement.

as the survivor of them and as regards the said [*wife*], whether covert or sole, shall by deed, revocable or irrevocable, or by will or codicil appoint (a), And in default of and until and subject to any such appointment

SETTLEMENTS.
No. 24.

IN TRUST for all or any the children or child of the said intended marriage [other than and except such son as hereinafter mentioned and excepted (b)], who being sons or a son attain the age of twenty-one years, or being daughters or a daughter attain that age or marry under it, and if more than one in equal shares.

PROVIDED ALWAYS that any child who or whose issue takes any part of the trust fund(s) under any appointment in pursuance of either of the powers lastly hereinbefore contained shall not, in the absence of any direction to the contrary, take any share in the unappointed part thereof without bringing the share or shares appointed to him or her or to his or her issue into hotchpot, and accounting for the same accordingly.

Hotchpot
clause.

[*Add if required*]

PROVIDED ALWAYS, and it is hereby agreed, that the excepted son hereinbefore referred to who is to be excluded from taking under the trust in default of appointment hereinbefore contained, is an eldest or only son or any other son of the said intended marriage who before attaining the age of twenty-one years becomes, or would if of full age be, entitled to the possession or to the receipt of the rents and profits of the lands and hereditaments in the county of devised by the will of [*or* comprised in the settlement dated, &c., and made between &c.], and of which hereditaments the said [*husband*] is now tenant for life in possession, or who before attaining that age becomes entitled to the first

No. 25.

Clause ex-
cluding son
entitled to
settled estates.

(a) In settling a fund under a will, by which it was bequeathed to a man until marriage, and then to be settled on his wife and children, the Court inserted a power for the husband and wife jointly by deed, and for the survivor by deed or will, to appoint to all or any of the children: *In re Gowan*, 17 Ch. D. 778.

Settlement by
Court.

(b) The words in brackets to be used only if the next form is used.

SETTLEMENTS.
No. 25.

vested estate of freehold in remainder immediately expectant on the estate for life of the said [*husband*] under the said will [*or settlement*];

AND if there should be no child of the said intended marriage other than and except as aforesaid who attains a vested interest under the trust in default of appointment hereinbefore contained, then the capital of the trust fund(s) is to be held In trust for such eldest son or other excepted son of the said intended marriage as hereinbefore mentioned, if and when he attains the age of twenty-one years, and to be then vested and not before; and if there should be more than one such excepted son, then In trust for the last survivor of such eldest and other excepted sons absolutely if and when he attains the age of twenty-one years and to be then vested and not before.

No. 26.

Advancement
Clause.

AND IT IS HEREBY AGREED that the trustees or trustee may at any time or times after the death of the said [*husband*] and [*wife*] or in their, his or her lifetime, with their, his (*a*) or her consent in writing, raise any part or parts, not exceeding together one half of the presumptive or vested share of any child or other issue of the said intended marriage, under the trusts aforesaid, and may pay or apply the same for his or her advancement or benefit as the trustees or trustee think fit.

No. 26a.

Power to wife
to surrender
life interest.

AND IT IS HEREBY DECLARED that the said [*wife*] may, notwithstanding the restraint on anticipation hereinbefore imposed, surrender her life interest in the vested share of any child or other issue of the said intended marriage in favour of such child or other issue so as to bring such share into possession.

No. 27.

Trust of
surplus income
after payment
of annuity to
husband.

AND IT IS HEREBY AGREED (*b*) that if the said [*husband*] shall survive the said [*wife*] then the annual income of the wife's trust fund remaining after payment of any

(*a*) Where the husband is bankrupt the consent also of the trustee in bankruptcy acting under the direction of the Court of Bankruptcy is necessary: *Re Cooper, Cooper v. Slight*, 27 Ch. D. 565.

(*b*) This Form is applicable where Form No. 23b or 32 is used.

annual sum payable or applicable under these presents to or for the benefit of the said [*husband*] shall be paid or applied to or for the benefit of the issue of the said intended marriage, or otherwise in like manner as such income would for the time being be payable or applicable if the said [*husband*] were dead, and having regard to any appointment for the time being actually made under the powers hereinbefore contained, but without regard to any appointment capable of being made but not actually made under those powers.

SETTLEMENTS.

No. 27.

AND IT IS HEREBY AGREED, that if there should not be any child of the said intended marriage who attains a vested interest under the trust in default of appointment hereinbefore contained, then subject to the trusts and powers hereinbefore contained,

No. 28.

Trusts in
default of
children.

THE HUSBAND'S TRUST FUND (a) and the income and statutory accumulations (if any) of the income thereof, or so much thereof as shall not have become vested or been applied under any of the trusts or powers affecting the same, shall, after the death of the said [*wife*] and such failure of children as aforesaid, be held IN trust for the said [*husband*], absolutely,

No. 29.

As to husband's
trust fund.

AND THE WIFE'S TRUST FUND (a) and the income and statutory accumulations (if any) of the income thereof, or so much thereof as shall not have become vested or been applied under any of the trusts or powers affecting the same shall, after the death of the said [*husband*] and such failure of children as aforesaid, be held IN trust for such person or persons and purposes as the said [*wife*] shall, while not under coverture, by deed, revocable or irrevocable, or shall, whether covert or sole (b), by will

No. 30.

As to wife's
trust fund.

(a) Forms Nos. 29 and 30 are applicable where funds are settled by or on behalf of the husband and wife respectively; but where only one fund is settled it should be called the trust fund and the required trust adapted to it.

(b) The testamentary power should be given in all events, and not merely if the wife dies first: *Holliday v. Overton*, 14 Beav. 467; *Trimmell v. Fell*, 16 Beav. 537; and *Willock v. Noble*, L. R. 7 H. L.

Powers of wife
in default of
children.

SETTLEMENTS.
No. 30.

or codicil appoint; And in default of and until and subject to any such appointment, Upon the trusts following (that is to say) If the said [*wife*] should survive the said [*husband*], then in trust for her absolutely but so that she shall not have power to alienate or charge her expectant interest during coverture; But if she should die in the lifetime of the said [*husband*], then In trust for the person or persons who under the statutes for the distribution of the effects of intestates would have become entitled thereto at her death if she had died possessed thereof intestate and without ever having been married (*a*), such persons, if more than one, to take as tenants in common in the shares in which they would have taken under the same statutes.

No. 31.

Application of
rents of real
estate until
sale.

AND IT IS HEREBY AGREED that until all the hereditaments by the recited indenture of even date herewith conveyed on trust for sale are sold the trustees or trustee shall pay or apply the net rents and profits thereof or of the unsold part thereof (after payment thereof of all rates, taxes, payments for insurance, repairs, and other outgoings which any tenant or other person is not liable to pay), upon and subject to the like trusts and powers upon and subject to which the annual income of the trust fund [*or the husband's trust fund, or the wife's trust fund, as the case may require*], is payable or applicable under the trusts herein contained.

No. 32.

Power to wife
to appoint to
husband an
annual sum.

AND IT IS HEREBY AGREED that the said [*wife*] may, notwithstanding coverture, by will or codicil appoint that after her death any annual sum or sums not exceeding in the whole the annual sum of £ , shall be paid to or

580. Power of appointment by deed while not under coverture is required, otherwise on dissolution of the marriage it might be necessary to apply to the Divorce Court with reference to the settled property under 22 & 23 Vict. c. 61, s. 5, as extended by 41 Vict. c. 19, s. 3.

Words "with-
out having
been married"
in case of a
widow.

(*a*) The words "without ever having been married" in the settlement of a widow on her second marriage, exclude a child by her former marriage: *Emmins v. Bradford*, 13 Ch. D. 493. In such a settlement say "without having contracted the now intended marriage."

for the benefit of the said [*husband*] during the residue of his life, or any less period, out of the annual income of the wife's trust fund, and the annual sum or sums so appointed shall be paid accordingly.

SETTLEMENTS.
No. 32.

AND IT IS HEREBY AGREED that the said [*wife*] may, notwithstanding coverture, from time to time, or at any time, by deed revocable or irrevocable, or by will or codicil, appoint to or in favour of the said [*husband*] in case he should survive her during the residue of his life, or any less period, all or any part of the annual income of the wife's trust fund: And that upon any such appointment the powers and trusts herein limited to take effect after the death of the said [*wife*] shall take effect only after the determination of, and in the meantime subject to, the interest limited by any such appointment.

No. 32a.
Power to wife to appoint income to husband.

AND IT IS HEREBY DECLARED (a) that in case the said [*husband*] shall survive the said [*wife*] then so much of the annual income of the wife's trust fund as shall not be required to discharge any annual sum payable to him under these presents, shall be paid and applied to or for the benefit of the children or issue of the said intended marriage, or otherwise in like manner as the same would for the time being be payable or applicable if he were dead, and having regard to any appointment which for the time being has actually been made under the powers aforesaid, but so that such payment or application shall not be suspended on account of the possibility that he may make a subsequent appointment.

No. 32b.
Destination of surplus income during suspension of appointment.

PROVIDED ALWAYS that if the said [*wife*] should marry again, then, without prejudice to any appointment which may have already been made under the powers hereinbefore contained, she may, either in contemplation of or after any subsequent marriage, from time to time by

No. 33.
Power to wife to make settlement on future marriage.

(a) This clause is only necessary where the husband surviving has a power of appointment among issue which prevents the immediate distribution of the fund, after setting apart what is required to pay the annuity to him: see Forms Nos. 23b and 32.

SETTLEMENTS.
No. 33.

deed, revocable or irrevocable, or by will or codicil, revoke the trusts, powers and provisions hereinbefore declared concerning any part or parts of the wife's trust fund, not exceeding together the following shares or share thereof, that is to say: If there should be but one child and no more of the now intended marriage who being a son attains the age of twenty-one years, or being a daughter attains that age or marries, not exceeding two-third shares thereof, And if there should be two or more such children not exceeding one-half thereof; And may appoint that the part or parts to which such revocation extends shall, after her death, be held upon such trusts and subject to such powers and provisions and generally in such manner for the benefit of any husband who may survive her or any child or other issue or any one or more exclusively of the children or other issue of such subsequent marriage, including powers of advancement in favour of any issue, similar to the power hereinbefore contained in favour of issue of the now intended marriage, as the said [*wife*] may think proper, but so that any husband who may survive her shall not take more than a life interest, and that in default of any person becoming entitled under any revocation and appointment under this present power, and subject to the interests appointed thereunder, the part or parts of the wife's trust fund to which any such revocation and appointment relates shall devolve under these presents in the same manner as if no revocation or appointment had been made under this present power:

PROVIDED ALSO, that under an exercise of the power aforesaid any child (a) of the said [*wife*] shall not, except by way of advancement, become entitled to any share of the wife's trust fund unless being a son he attains the age of twenty-one years, or being a daughter she attains that age or marries:

(a) This provision cannot be extended to other issue on the ground of remoteness. Moreover a share appointed to other issue dying under age would not necessarily fall to the husband or wife as next-of-kin.

PROVIDED ALSO that an only child or any two or more children and any issue of a child or children collectively of the said [*wife*] by a subsequent marriage shall not under an exercise of the said power become entitled to a larger share of the wife's trust fund than such only child or such children collectively would have taken in case the wife's trust fund had been equally divided between all the children of the said [*wife*] by every marriage who being sons or a son attain the age of twenty-one years, or being daughters or a daughter attain that age or marry:

PROVIDED ALSO that the power last aforesaid may be exercised so often as the said [*wife*] shall marry, so that the total amount ultimately appointed under all revocations and appointments made pursuant thereto shall not exceed, according to the event, the shares or share hereinbefore specified of the wife's trust fund.

SETTLEMENTS.
No. 33.

PROVIDED ALWAYS, and it is hereby agreed, that in case the said [*husband*] or [*wife*] as the case may be should marry again, then, without prejudice to any appointment which may have already been made under the powers hereinbefore contained, he, so far as regards the husband's trust fund, and she, so far as regards the wife's trust fund, may, either in contemplation of or after any subsequent marriage make such revocation and appointment with respect to those funds respectively as hereinafter mentioned, that is to say; may from time to time by deed, revocable or irrevocable, or by will or codicil, revoke the trusts, powers and provisions hereinbefore declared concerning any part or parts of the husband's trust fund or the wife's trust fund as the case may be, not exceeding together the following shares or share thereof, that is to say: If there should be but one child and no more of the now intended marriage who being a son attains the age of twenty-one years, or being a daughter attains that age or marries, not exceeding two-third shares thereof, And if there should be two or more such children, not exceeding one-half thereof; And may

No. 33a.

Power to
husband or
wife to make
settlement on
future
marriage.

SETTLEMENTS.
No. 33a.

appoint that the part or parts to which such revocation extends shall, after his or her death, as the case may happen, be held upon such trusts and subject to such powers and provisions and generally in such manner for the benefit of any wife who may survive him or any husband who may survive her as the case may be or any child or other issue or any one or more exclusively of the children or other issue of such subsequent marriage, including powers of advancement in favour of any issue, similar to the power hereinbefore contained in favour of issue of the now intended marriage, as the said [*husband*] or the said [*wife*] as the case may be may think proper, but so that any wife who may survive him or any husband who may survive her as the case may be shall not take more than a life interest, and that in default of any person becoming entitled under any revocation and appointment under this present power, and subject to the interests appointed thereunder, the part or parts of the fund to which any such revocation and appointment relates shall devolve under these presents in the same manner as if no revocation or appointment had been made under this present power :

PROVIDED ALSO, that under an exercise of the power aforesaid any child (a) of the person making the appointment shall not, except by way of advancement, become entitled to any share of the fund to which the appointment relates, unless being a son he attains the age of twenty-one years, or being a daughter she attains that age or marries :

PROVIDED ALSO that an only child or any two or more children and any issue of a child or children collectively of the person making the appointment by a subsequent marriage shall not under an exercise of the said power become entitled to a larger share of the fund to which the appointment relates than such only child or such children collectively would have taken in case that fund had been equally divided between all the children of the

(a) See note to last form.

person making the appointment by every marriage who being sons or a son attain the age of twenty-one years, or being daughters or a daughter attain that age or marry:

SETTLEMENTS.
No. 33a.

PROVIDED ALSO that the power last aforesaid may be exercised so often as the person having the power shall marry, so that the total amount ultimately appointed under all revocations and appointments made pursuant thereto shall not exceed, according to the event, the shares or share hereinbefore specified.

AND the said [*husband*] hereby covenants with the trustees that if the said intended marriage should be solemnised he will not by any act or omission cause or allow the policy hereby assigned, or any policy substituted therefor as hereinafter provided, to become void or voidable, and will during his life, from time to time duly pay all money payable for keeping on foot the said policy, or any policy substituted as aforesaid, or for restoring the same respectively if and when voidable; and if any such policy should become void will effect on his life a new substituted policy or policies, with such office and in such names or name as the trustees or trustee shall direct, and for an amount equal to the sum which would have been payable under the void policy if it had not become void and the said [*husband*] had then died, and will deliver, and if necessary will also assign, every such substituted policy, and deliver the receipt for every such payment to the trustees or trustee, and will not do or suffer any act or thing by means whereof the trustees or trustee may be prevented from receiving any money assured by any policy, whether original or substituted, subject to the trusts of these presents:

No. 34.
Covenant by husband to keep up policy on his life, and provisions relating thereto and to substituted policy.

AND IT IS HEREBY AGREED that the trustees or trustee may at any time, in their or his absolute discretion, apply any income of the trust funds hereinbefore settled, or if income be insufficient, then any capital, in making any payments proper for keeping on foot or restoring any subsisting policy, or for effecting, keeping on foot, or

Power for trustees to keep up or restore policy or effect new policy.

SETTLEMENTS.
No. 34.
 —

restoring any substituted policy [but so that as between the husband's trust fund and the wife's trust fund the said payments shall be made out of the husband's trust fund in priority to the wife's trust fund (a)]: And every policy so effected, and the money payable thereunder, shall be held and applied upon the trusts and subject to the powers and provisions hereinbefore declared concerning the policy hereby assigned, and the moneys payable thereunder.

Limitation of
 liabilities of
 trustees.

AND IT IS HEREBY AGREED that it shall not be obligatory on the trustees or trustee to enforce any covenant hereinbefore contained in reference to any policy, whether original or substituted, or to apply any income or capital in making payments for keeping on foot or restoring any such policy, or for effecting or keeping on foot or restoring any substituted policy, unless when required so to do in any specific case by writing signed by some person, or the guardian of some person, beneficially interested in the premises: And unless also due provision be made to the satisfaction of the trustees or trustee for payment of the costs of any proceedings required to be taken, and any omission or neglect by the trustees or trustee in any of the matters aforesaid (except when required and upon due provision made as aforesaid) shall not constitute a breach of trust, and the trustees or trustee shall not be responsible on account of any policy becoming void through any means except their or his own omission or neglect when so required, and upon due provision made as aforesaid.

No. 35.
 —

AND IT IS HEREBY AGREED, and the said [*wife*] (b)

(a) Omit these words in brackets if there is only one trust fund settled.

Operation and
 extent of
 agreement to
 settle.

(b) This covenant is now made by the wife alone. Under the M. W. P. A. s. 2, the husband married after 1882 takes no interest in the property belonging to his wife at the time of marriage or acquired by, or devolving on her after marriage, and his covenant has no effect: see *Daves v. Tredwell*, 18 Ch. D. 354. The covenant by the wife binds her present and future property under s. 1 of that Act, if she is not restrained from anticipating it: see s. 19. But if she carries on a trade

hereby covenants with the trustees hereinbefore named that if, besides the trust funds hereinbefore assigned [or settled] by her she should at the time of the now intended marriage be (a), or if at any time or times during the same coverture she should become entitled in any manner and for any estate or interest to any real or personal property of the value of £ or upwards at one time and from one and the same source (except jewels, trinkets, ornaments, furniture, plate, china, glass, pictures, prints, books, and other chattels passing by delivery, and not being securities for money, which, and also any property excepted from this covenant as being not of the value of £ , it is hereby agreed shall belong to her absolutely) Then and in every such case she and all other necessary parties will at the cost of the trust estate, as soon as may be, and to the satisfaction of the trustees or trustee, convey such real or personal property to the trustees or trustee upon trust to sell or call in or convert into money such part or parts thereof as shall not consist of money or of an annuity or other real or personal property limited to or held in trust for her for her life only, or for a term of years determinable on her death, but with power for the trustees or trustee to postpone such sale, calling in, and conversion so long as they or he may think fit, and to retain investments transferred under this covenant and dispose of the annual income thereof in like manner as the annual income of the wife's trust fund, and so that

SETTLEMENTS
No. 35.

Agreement to
settle other
property of
wife.

separately from her husband it is void against her creditors in case of her bankruptcy: ss. 1 (5), 19, *Ex parte Bolland*, L. R. 17 Eq. 115. An agreement to settle other property of the wife is no longer necessary for the protection of the wife against marital right, but it may still be useful to protect her against marital influence.

(a) The words "should at the time of the intended marriage" are substituted for the usual words "now is," in order to avoid the *ad valorem* stamp duty which would be payable under the latter words if the wife were at the date of the settlement entitled to any other property within the meaning of the agreement being of a definite and certain sum or amount. The agreement in the text only renders the settlement liable to an additional 10s. stamp. Stamp thereon.

SETTLEMENTS.
No. 35.

any reversionary interest be not sold before it falls into possession unless the trustees or trustee see special reason for sale :

AND IT IS HEREBY AGREED that the trustees or trustee shall stand possessed of the money to arise from such sale, calling in, or conversion, and of any part of the said property received in money Upon the trusts and subject to the powers and provisions hereinbefore declared concerning money forming part of the wife's trust fund, or as near thereto as circumstances will permit, and upon trust to pay any annuity or the income of any other real or personal property limited to or held in trust for the said [*wife*] for her life only or for any term of years determinable on her death, to her without power of anticipation during any coverture, but with power for the trustees or trustee, with her consent in writing at any time to sell the same so that the money to arise from such sale be held and applied upon the trusts and subject to the powers and provisions hereinbefore declared concerning money forming part of the wife's trust fund, or as near thereto as circumstances will permit :

Exoneration
of trustees.

PROVIDED ALWAYS that the trustees or trustee shall not be made accountable in respect of any real or personal property becoming subject to the covenant to settle lastly hereinbefore contained unless and until the same shall have been actually conveyed, assigned, paid or transferred to them or him, nor shall they or he be chargeable with breach of trust or made liable in any way for not taking any proceedings to get in the same real or personal property or any part thereof unless and until required in writing so to do by some person beneficially interested under these presents.

[*Add power to lease, Form No. 38, and see note (a) to Form No. 37.*]

No. 36.

Power to
invest in the
purchase of
land.

AND IT IS HEREBY AGREED that the trustees or trustee may during the lives of the said [*husband*] and [*wife*], and the life of the survivor of them, with their, his, or her consent in writing, instead of laying out all or any money

held on the trusts of these presents in the investments hereinbefore authorized, invest the same money in the purchase of any messuages, lands or hereditaments in England or Wales, being either freehold, customary freehold, or copyhold of inheritance, or leasehold for any term of years whereof not less than sixty years is unexpired at the time of purchase, And the hereditaments so purchased shall be conveyed, surrendered or assigned to and vested in the trustees or trustee Upon trust with the consent in writing of the said [*husband*] and [*wife*], or the survivor of them, during their, his, or her lifetime, and after the death of both at the discretion of the trustees or trustee to sell the same hereditaments or any part thereof;

SETTLEMENTS.
No. 36.

AND the trustees or trustee shall stand possessed of the net money to arise from any such sale (after payment of the costs incidental thereto) Upon the trusts and subject to the powers and provisions (including this present power of purchasing hereditaments) upon and subject to which the money laid out under this present power would then have been held if the same had not been so laid out and in the meantime until sale the purchased hereditaments are to be considered as money. [*Add power to lease, Form No. 38, and see note (a) to Form No. 37.*]

AND IT IS HEREBY AGREED that at any time during the joint lives and upon the joint request in writing of the said [*husband*] and [*wife*] the trustees or trustee shall, and they and he are hereby required to raise out of the husband's trust fund or the wife's trust fund, or partly out of each, any sum not exceeding £ , and invest the sum so raised in the purchase and in paying the expenses of the purchase of a dwelling-house with or without garden-ground or other land, or any usual appurtenances, as a residence for the said [*husband*] and [*wife*], such messuage and hereditaments to be either freehold, customary freehold, or copyhold of inheritance, or leasehold, for any term of years whereof not less than sixty years is unexpired at the time of purchase, And the hereditaments so purchased shall be conveyed, surren-

No. 37.

Power (obligatory on request) to invest in the purchase of a residence.

SETTLEMENTS.
No. 37.

dered, or assigned to and vested in the trustees or trustee Upon trust at the request in writing of the said [*husband*] and [*wife*] or the survivor of them during their, his or her lifetime, and after the death of both at the discretion of the trustees or trustee to sell the same hereditaments or any part thereof:

AND, &c. [*Continue as in last Form, and add at the end the following provision*]:

AND IT IS HEREBY AGREED that until such sale as aforesaid the trustees or trustee shall permit the said [*husband*] and [*wife*] and the survivor of them to occupy the messuage, land and hereditaments so purchased [*Add power of leasing, Form No. 38 (a)*].

No. 38.

Power of
leasing for
twenty-one
years heredita-
ments pur-
chased (b).

AND (b) IT IS HEREBY AGREED that the trustees or trustee may with the consent in writing of the said [*husband*] and [*wife*], or the survivor of them during their, his, or her lifetime, and after the death of both at the discretion of the trustees or trustee, lease any messuages, lands, or hereditaments subject to the trusts of these presents for any term not exceeding twenty-one years at the best rent to be reasonably obtained, without taking a fine, and subject to such special covenants and provisions as may be deemed proper [and the rents received shall be paid or applied in like manner as the income of investments representing the purchase-money

(a) If Forms Nos. 35, 36, and 37, or any two of them, are used in the same settlement, it will be sufficient to use No. 38 once only, and it should come after the last used.

(b) Where land is conveyed upon trust for sale, as in Form No. 16, and the husband and wife are made successive tenants for life of the proceeds of sale and of the rents and profits until sale, the tenant for life for the time being may by leave of the Court obtained under S. L. A., 1884, s. 7, exercise the powers of leasing conferred by S. L. A. 1882, s. 6. But until such an order has been obtained and registered, and, if necessary, re-registered as a *lis pendens*, the trustees are the proper persons to exercise the leasing power in the text without any consent except what may be required by the settlement: see S. L. A., 1884, ss. 6 and 7. The same principle applies to land purchased under Forms Nos. 36 or 37.

would be payable or applicable if a sale had been made and the proceeds had been invested under the trusts of these presents (a).]

SETTLEMENTS.
No. 38.

AND (b) IT IS HEREBY AGREED that the trustees or trustee may with the consent in writing of the said [husband] and [wife], or the survivor of them during their, his, or her life, and after the death of both at the discretion of the trustees or trustee, concur with any other person for the time being entitled to dispose of any undivided share or shares of any lands or hereditaments mentioned in the [2nd] Schedule hereto, in making or in allowing or consenting to making a partition of the same hereditaments or any of them, and to give or receive any money for equality of partition, and may make any such partition upon any terms or conditions, and in any manner they or he shall think fit, and may execute and do all assurances and things which they or he think expedient for the purpose of effecting such partition or any arrangement relating thereto, and may accept any hereditaments under a partition instead of the share hereby assigned of proceeds of sale of hereditaments, and the hereditaments so accepted shall be conveyed to and vested in the trustees or trustee upon and subject to like trusts, powers, and provisions as are by these presents declared and capable of taking effect concerning any hereditaments purchased out of the wife's trust fund (c) under the power in that behalf hereinbefore contained [*i.e.* Form No. 36].

No. 39.
Power to
concur in
partition (b).

(a) Omit the words in brackets where this form is used in connection with Form No. 16, and in that case Form No. 31, as to the application of the rents until sale, should be used in the deed of even date: see Precedent XXXA., *post*.

(b) This form is applicable to a settlement of a share of the proceeds of the sale of hereditaments directed to be sold but remaining unsold, see Preced. XXXI., *post*, but it may be readily adapted to a settlement upon trust for sale of an undivided share. The observations in note to Form No. 38 as to leasing apply also to a partition.

(c) That is, assuming that the share assigned by the settlement belonged to the wife.

SETTLEMENTS.

No. 40.

Power to
deposit money
in bank.

Bonuses to be
income.

AND IT IS HEREBY AGREED that the trustees or trustee may, pending the negotiation and preparation of any security hereby authorized, or during any other time while an investment of the nature aforesaid is being sought for, deposit any money, subject to the trusts of these presents, at any joint-stock or other bank, either at interest or otherwise, as may be deemed expedient, all which interest (if any) and all bonuses and other periodical payments in the nature of income accruing from or payable in respect of any of the trust premises shall, for the purposes of these presents, be deemed annual income, and be applicable accordingly.

No. 41.

Power to make
contributory
loans.

AND FURTHER that the trustees or trustee [with such consent or at such discretion as aforesaid] may lend money on any security hereinbefore authorized in conjunction with money lent by any other person or persons, by way of contributory loan, and may accept the security in the names or name of the trustees, or one of them, together with other names or another name, or may permit the same to be taken exclusively in the names of other persons, as may be deemed expedient.

No. 42.

Loan may be
for a term.

AND FURTHER may contract that money invested on any security shall not be called in during any period not exceeding five years, provided interest be paid within one calendar month after the half-yearly day on which it becomes due.

No. 43.

Power to
trustees to
value and
apportion
mixed funds.

PROVIDED ALWAYS, that in the execution of any of the aforesaid trusts or powers the trustees or trustee may decide what money represents income and what represents capital, and may allot or apportion any moneys or investments, the trusts whereof are hereby declared, to or between the persons entitled thereto in such manner [and may set apart such investments to answer any annual sum payable to any person] as the trustees or trustee shall deem just and reasonable according to the respective rights and interests of those persons, and notwithstanding that funds held on different trusts have been

blended, and for the purposes aforesaid may ascertain and fix the value of the respective parts of the said investments, and every such decision, allotment, apportionment [setting apart], and valuation, shall be as binding upon all persons then or thereafter to be interested in the premises as if the same had been duly made by a Court of competent jurisdiction.

SETTLEMENTS.
No. 43.

AND IT IS HEREBY AGREED that securities to bearer taken as an investment may be deposited by the trustees or trustee for safe custody in their or his names or name with any banker, or banking company, or with any company whose business it is to take charge of securities of that nature, and the trustees or trustee shall not be responsible for any loss incurred in consequence of such deposit, and may pay out of the income of the trust premises any sum required to be paid on account of such deposit and for safe custody, and such deposit shall be a sufficient compliance with the power to invest hereinbefore contained notwithstanding the direction that investments shall be made in their or his names or name.

No. 44.
Power to trustees to deposit securities to bearer for safe custody.

AND IT IS HEREBY DECLARED that any trustee in the conduct of the trust business may instead of acting personally employ and pay an agent whether being a solicitor or any other person to transact all business and do all acts required to be done in the trust including the receipt and payment of money (a)

No. 45.
Power to trustees to employ agents to receive money, &c.

AND THAT ANY TRUSTEE being a solicitor or other person engaged in any profession or business shall be entitled to be paid all usual professional charges for business transacted and acts done by him in connection with the trusts hereof including acts which a trustee not being in any profession or business could have done personally (b).

No. 45a.
Costs of professional trustee.

(a) See *Re Bellamy and Metropolitan Board of Works*, 24 Ch. D. 387, *Re Flower and same*, 27 *ib.* 592.

(b) See *Harbin v. Darby*, 28 Beav. 325, and *Johnson v. Telford*, 3 Russ. 477; and as to employing an agent to collect debts, see *Brier v. Evison*, 26 Ch. D. 238.

SETTLEMENTS.
No. 46.

Nomination of
persons to
appoint new
trustees (a).

Statutory
provisions.

AND IT IS HEREBY AGREED that the said [*husband*] and [*wife*] during their joint lives, and the survivor of them during his or her life, shall have power to appoint a new trustee or new trustees of these presents.

The following amongst other provisions in settlements of personal estate are supplied by statute and should be omitted :—

- (a) Directions as to the manner of sale where a trust or power is conferred : C. A. s. 35.
- (b) Trustees' receipt clause : *ib.* s. 36.
- (c) Receipt and application by trustees of income and the accumulation of surplus income during minorities : *ib.* s. 43 (applicable only where the income will go along with the capital if and when the capital vests).
- (d) Power to trustees to compound and compromise : *ib.* s. 37.
- (e) Power to appoint new trustees : *ib.* s. 31.
- (f) Trustees' indemnity and re-imbursement clauses : 22 & 23 Vict. c. 35, s. 31

SECT. IV.

FORMS IN WILLS.

WILLS.
No. 47.

Commence-
ment of will.

I , of , hereby revoke all testamentary dispositions heretofore made by me, and declare this to be my last will, which I make this day of 18 (b).

No. 48.

Commence-
ment of
codicil.

End of codicil.

I of declare this to be a first [*or second, &c.*] codicil, which I make this day of 18 (b), to my will which is dated the day of 18 .
And subject as aforesaid I confirm my said will.

No. 49.

Appointment
of trustees
and executors.

I APPOINT X. of &c., Y. of &c., and Z. of &c., to be the executors and trustees of my will, and they or the survivors or survivor of them, or the executors of admi-

-
- (a) The appointment will be made under C. A., s. 31.
 - (b) It is very convenient to have the date at the beginning of the will or codicil.

nistrators of such survivor, or other the trustees or trustee for the time being hereof are hereinafter called the trustees or trustee,

WILLS.
No. 49.

AND I BEQUEATH to each of them, if he shall accept the office of trustee and executor, the sum of £ .

Legacies to
trustees and
executors.

I APPOINT my wife , and after her death the trustees or trustee, guardian and guardians of my infant children.

No. 50.

Appointment
of guardians.

I CONFIRM the settlement made in contemplation of my marriage with my wife, and declare that the provisions hereby made for her and my children [issue] shall be in addition to and not in satisfaction of those made or covenanted to be made for them by settlement.

No. 51.

Confirmation
of testator's
marriage
settlement.

I BEQUEATH to my wife absolutely all the plate, linen, china, glass, books, pictures, prints, furniture, jewellery, and articles of household or personal use or ornament, wines, liquors, and consumable stores, and other articles and effects of every kind which at my death shall be in or about my dwelling-house, except money or securities for money: And I also bequeath to her the sum of £ , to be paid to her immediately after my death.

No. 52.

Bequest to
wife of
furniture, &c.

And legacy.

I BEQUEATH the following charitable legacies, for which the receipts of the treasurers of the respective societies hereinafter named shall be sufficient discharges (that is to say), To the Society £ ; To &c.; all which charitable legacies I direct to be paid exclusively out of that part of my personal estate which by law is applicable for charitable purposes, and in priority to all other payments thereout; and I direct that my debts, funeral and testamentary expenses, and other legacies, shall be primarily charged upon and payable out of my other personal estate not applicable by law for charitable purposes.

No. 53.

Bequest of
charitable
legacies.

I BEQUEATH to each of my indoor and outdoor servants, not in receipt of daily or weekly wages, who shall be in

No. 54.

Legacies to
servants.

WILLS.
No. 54.
—

my service at my death, and shall have been in such service for twelve calendar months immediately preceding, one year's wages in addition to wages then due.

No. 55.
—
Annuities to
servants.

I BEQUEATH the several annuities following, that is to say, To my housekeeper A. B., whether in my service or not at my death, an annuity of £ during her life; To my butler C. D., if he shall be in my service at my death, an annuity of £ during his life; To &c., &c. And I direct that females shall not have power during any coverture to anticipate their respective annuities (a), and that each annuity shall commence from the day of my death and shall accrue due from day to day, but shall be paid by equal quarterly payments, the first of such payments to be made at the end of three calendar months from my death. I empower the trustees or trustee to provide for payment of any annuity before bequeathed either by purchasing a Government annuity to answer, or by setting apart as an annuity fund such investments as the trustees or trustee think proper to answer the same, and any annuity so provided for shall no longer be a charge upon the residue of my estate, but shall be solely charged on the Government annuity or investments so purchased or set apart, and my personal estate or the proceeds thereof may be distributed accordingly discharged therefrom: And upon the cesser of any annuity the annuity fund (if formed), or so much (if any) thereof as the trustees or trustee do not think it necessary to retain to answer any remaining annuity shall fall into and form part of my residuary estate.

No. 56.
—
Bequest of
annuity.

I BEQUEATH to an annuity of £ [free of legacy duty] for her life, without power of anticipation during any coverture, to commence from my death and to be considered as accruing from day to day, but to be paid by equal half-yearly payments, the first payment to be made at the end of six calendar months after my death: And I direct the trustees or trustee to set apart

(a) See as to separate use, note to Form No. 21.

as soon as conveniently may be, and invest in their or his names or name in any of the investments in which my residuary estate is authorized to be invested, a sum the income whereof when invested shall be sufficient at the time of investment to pay the said annuity, and to pay the same accordingly, with power to resort to the capital of the appropriated fund whenever the income shall be insufficient: And until such sum shall be so appropriated, I charge my residuary estate with the said annuity: And subject to the payment of the said annuity, the appropriated fund, or so much thereof as shall not be resorted to to make up deficiency of income, shall fall into and form part of my residuary estate.

WILLS.
No. 56.
—

I BEQUEATH the following legacies to the following persons; namely, to the sum of £ , &c., &c. And in case any woman to whom a legacy is hereinbefore bequeathed should be under coverture at my death then I direct that the trustees or trustee may at their or his absolute discretion either pay the whole or any part of her legacy to such person or persons and in such manner generally as she shall by any writing under her hand direct, or if the trustees or trustee shall think it more for her interest, may pay the whole or any part of such legacy to the trustees or trustee for the time being of any settlement made on or subsequently to her marriage, to be by them or him held upon the trusts by that settlement declared concerning the trust funds, or any specified portion which my trustees or trustee may select of the trust funds comprised therein; Or my trustees or trustee may retain all or any part of the legacy of such woman under coverture and invest the same in any investments hereinafter authorized, and vary investments, and stand possessed of such investments upon trust as to the annual income thereof to pay the same to such woman during her life without power of anticipation during any coverture, and after her death (as to the capital and income) In trust for all or any one or more exclusively of the others or other of the

No. 57.
—

Gifts of
legacies.
Option to pay
to married
woman or to
her trustees.

WILL.
No. 57.

issue of the same woman [*continue usual trusts for issue as she shall appoint, and in default for children equally, with hotchpot and advancement clauses, adapting Forms Nos. 64 and 65*]:

No. 57a.

If no child of the married woman attains a vested interest, capital of legacy to go as she shall appoint, in default, to her next of kin.

AND if no child of the same woman obtains a vested interest under the trust in default of appointment hereinbefore contained, then the capital of the investments representing her legacy shall be held In trust for such person or persons as she shall while not under coverture by deed, revocable or irrevocable, or as she shall, whether covert or sole, by will or codicil appoint, and in default of and subject to any such appointment In trust for the person or persons who would under the statutes for the distribution of the effects of intestates have become entitled thereto at her death in case she had died possessed thereof intestate and without having been married, such persons, if more than one, to take as tenants in common in the same shares in which they would have taken under those statutes :

[*Add and adapt power to appoint life interest to a husband surviving, Form No. 70.*]

No. 57b.

Power to appoint separate trustees for any legacy.

I EMPOWER the trustees or trustee for the time being of my will to appoint a separate set of trustees for the legacy of any woman under the bequests aforesaid, and to pay or transfer her legacy to the separate set of trustees so appointed thereof and upon the trusts affecting the same, and thenceforth she shall during her life have power to appoint new trustees thereof.

No. 58.

Bequest to A. for life with remainder to his issue *per stirpes*.

I BEQUEATH to the trustees hereinbefore named the sum of £ upon trust, with the consent of A. of &c., during his life, and after his death at the discretion of the trustees or trustee, to lay out the same in the names or name of the trustees or trustee in any of the investments in which my residuary estate is authorized to be laid out and to vary investments: And until investment the said sum is to carry interest at the rate of four per cent. per annum from my death, payable out of my

residuary estate: And I direct the trustees or trustee to stand possessed of the said sum, or investments and the annual income thereof

WILLS.
No. 58.

UPON TRUST to pay the said income to A. during his life and after his death (as to capital and income)

IN TRUST in equal shares for all or any of the children of A. living at the time of his death, who being sons or a son attain the age of twenty-one years, or being daughters or a daughter attain that age or marry, and for all or any of the issue living at that time who being males or a male attain the age of twenty-one years, or being females or a female attain that age or marry, of any child of A. who dies in his lifetime leaving issue living at the time of his death, and so that such issue shall take through all degrees according to their stocks and in equal shares the share or shares which their parent would have taken if living at the time aforesaid, and so that no issue shall take whose parent is living at the time aforesaid, and so capable of taking. [*Add power of advancement after the death of A. or in his lifetime with his consent in writing, adapting Form No. 65, post.*]

AND if no child or other issue of A. lives to attain a vested interest under the trusts hereinbefore contained, then subject to the trusts hereinbefore declared in favour of A. and his issue, I direct that the said sum of £ , or the investments representing the same, and the income thereof, and all statutory accumulations, if any, of income, or so much thereof respectively as shall not have been applied under any power hereinbefore contained or any statutory power, shall fall into and form part of my residuary estate.

No. 58a.

In default of
issue fund to
fall into
residue.

I BEQUEATH the sum of £ to A. B. if and when he attains the age of twenty-one years, and if he is under that age at my death I direct the trustees or trustee to lay out the same [*continue as in Form No. 58, to the end of the clause directing interest to be paid until investment.*] And I direct the trustees or trustee to stand possessed

No. 59

Bequest of
contingent
legacy.

WILLS.
No. 59.

of the said sum or investments and the annual income thereof, and all statutory accumulations of income (a).
IN TRUST for the said A. B. if and when he attains the age of twenty-one years.

No. 60.

Legacies and
annuity to be
free of duty.

I DIRECT all the legacies and the annuity [*or annuities*] hereinbefore bequeathed to be paid [*and enjoyed (b)*] free of legacy duty.

No. 61.

General devise
and bequest
in trust for
sale.

I DEVISE AND BEQUEATH all the real and personal estate to which at my death I shall be beneficially entitled, or of which I shall have any general power to dispose beneficially by will (c) [*and not hereby otherwise disposed of (d)*], unto the trustees hereinbefore named for all my estate and interest therein Upon trust that the trustees or trustee [*defined in Form No. 49*] shall sell (e)

(a) As the contingent legacy carries interest the maintenance and accumulation clauses of C. A., s. 43, apply: see note at the end of that section.

(b) The words in brackets are to be used where any specific legacies are intended to be free of legacy duty: *Douglas v. Congreve*, 1 Keen, 554; *Cockerell v. E. of Essex*, 26 Ch. D. 538.

(c) Whether a power to appoint by will only should be thus exercised, see *Re Powell's Trusts*, 39 L. J. Ch. 188, deciding that under a power to appoint by will only though general, such interests only are, as regards the rule against perpetuities, capable of being created as would be valid if inserted in the instrument creating the power. This seems inconsistent with the principle that the exercise of the power operates first to make the appointed property part of the testator's estate so as to be assets for payment of debts and legacies, and next to bequeath it: see *Farwell on Powers*, p. 202; *Re Hoskin's Trusts*, 6 Ch. D. 281; *Re Van Hagan, Sterling v. Rochfort*, 16 *ib.* 18; and *Re Powell's Trusts* has not been followed in *Rous v. Jackson*, W.N. 1885, p. 86.

(d) Omit these words if there is no specific devise or bequest.

As to sale with-
out consent of
tenant for life
to pay debts
and legacies.

(e) There being a trust for payment of debts and legacies, which is paramount to the interest of the tenant for life (if any) in the residue of the proceeds of sale, it is conceived that the trustees can sell without his consent notwithstanding S. L. A., 1882, ss. 63, 56 (2), even if he obtained leave of the court under S. L. A., 1884, s. 7. As to the mode of selling, power to give receipts, and the powers of the survivors or survivor of trustees, see note to Form No. 16, *supra*.

Trust for sale.

For other words by which a trust for sale may be conferred, see note to C. A., s. 30, p. 82, *supra*. Words of limitation in the devise to the trustees in the text are omitted in accordance with 1 Vict. c. 26, s. 28.

the said real estate (including chattels real), and call in, sell, and convert into money such part of my personal estate as shall not consist of money, with power to postpone such sale and conversion for such a period as the trustees or trustee may think proper (a) :

WILLS.
No. 61.

And I direct that the income of my personal estate, however invested, shall from my death be treated as income, and no part thereof is to be added to capital [except accumulations of surplus income (if any) during a minority (b)].

And that until a sale of the said real estate the trustees or trustee may lease the same for any term not exceeding twenty-one years at the best rent to be reasonably obtained without taking a fine (c), And that the rents and profits thereof, or of so much thereof as for the time being remains unsold, shall after payment thereof of all rates, taxes, costs of insurance and repairs and other outgoings, be paid or applied to the persons or in the manner to whom or in which the income of the produce thereof is hereinafter directed to be paid and applied :

No. 61a.

Power to lease
real estate
until sale.

AND I direct the trustees or trustee out of the money to arise from the sale and conversion of my said real and personal estate and out of my ready money to pay my funeral and testamentary expenses and debts and the legacies bequeathed hereby or by any codicil hereto, and to stand possessed of the residue of the said money Upon trust to invest the same in their or his names or name in manner following and not otherwise (d), that is to say, In [add investments from Form No. 18]

No. 61b.

Trusts of
proceeds of
sale.

Investment.

(a) This power to postpone conversion enables wasting property to be retained *in specie* (*Gray v. Siggers*, 15 Ch. D. 74) and it enables the testator's business to be carried on for a reasonable period with a view to its sale as a going concern: *Re Chancellor, Chancellor v. Brown*, 26 Ch. D. 42.

(b) Omit the words in brackets where there is no trust of the residue for an infant.

(c) As to when the tenant for life (if any) of the proceeds of sale is the person to lease under S. L. A., 1882, see note to Form No. 38.

(d) See as to the object of these words note to Form No. 17.

WILL.
No. 61b.

With power for the trustees or trustee at discretion to change such investments for others of a like nature.

No. 62.
Trusts of
investments.

AND I DECLARE that the trustees or trustee shall stand possessed of the investments hereinbefore directed to be made or authorized to be retained (hereinafter called the trust fund), and of the annual income thereof, upon the trusts following, that is to say:—

No. 63.
Income to wife
during widow-
hood [or life].

UPON TRUST to pay the said income to my wife during her widowhood (a) [or during her life without power of anticipation during any coverture (b)]

And after her death or second marriage, which shall first happen [or after her death], then as to the capital and income of the trust fund

No. 64.
Trust for
issue as wife
shall appoint;
in default for
children.

IN TRUST for all or any one or more, exclusively of the others or other of my issue, whether children or remoter descendants (c), at such time, and if more than one in such shares, and with such gifts over, and generally in such manner, for the benefit of such issue or some or one of them, as my wife shall, whether covert or sole, by deed revocable or irrevocable, or by will or codicil appoint; and in default of and until and subject to any such appointment, IN TRUST for all or any my children or child who being sons or a son attain the age of twenty-one years, or being daughters or a daughter attain that age or marry, and if more than one in equal shares. [*Where daughters' shares are settled by Form No. 66, add* But so that each daughter's share shall be retained and held

Gift during
widowhood
where marriage
void.

(a) Where between the date of a testator's will and his death, his marriage was declared void *ab initio*, a gift by him to her "during her widowhood" was held to have failed, though a gift to her of a legacy describing her as the testator's "wife" was good, because it was a mere misdescription; *Re Boddington, Boddington v. Clariat*, 22 Ch. D. 597, affirmed, 25 *ib.* 685.

(b) As to separate use see note to Form No. 21.

(c) As to restricting this power, see first note to Form No. 24. But in any appointment made under it, regard must be had to the limits allowed by the rules against perpetuity, as from the death of the testator.

on such of the trusts hereinafter declared concerning the same as shall be subsisting and shall not lapse by reason of her death in my lifetime (a).]

WILLS.
No. 64.

AND I declare that any child who, or whose issue shall take any part of the trust fund under any appointment by my wife shall not, in the absence of any direction by her to the contrary, take any share in the unappointed part without bringing the share or shares appointed to him or her, or his or her issue into hotchpot, and accounting for the same accordingly.

No. 64a.

Hotchpot
clause.

I EMPOWER the trustees or trustee at any time and from time to time after the death or second marriage [*or after the death (b)*] of my wife, or during her widowhood [*or her life (b)*], with her consent in writing to raise any part or parts not exceeding together one-half of the presumptive or vested share of any child or other issue of mine under the trusts hereinbefore declared, and to pay or apply the same for the advancement or benefit of such issue, as the trustees or trustee think proper.

No. 65.

Advancement
clause.

I DIRECT that after the death or second marriage of my wife, which shall first happen [*or after the death of my wife, if she takes a life interest*], unless she shall in exercise of the power of appointment hereinbefore given to her [*No. 64*] expressly direct to the contrary, the trustees or trustee shall retain in their or his names or name, the share of each daughter of mine in the trust fund under the trust aforesaid, with power after she attains the age of twenty-one years, and after the death or second marriage, [*or after the death*] of my wife with the consent of such daughter during the residue of her life, but during her minority and also after her death at the discretion of the trustees or trustee from time to time to vary the investments thereof for others hereinbefore authorized to be made; AND shall stand possessed of her share and the

No. 66.

Settlement of
daughters'
shares.

(a) See *Re Roberts, Tarleton v. Bruton*, 27 Ch. D. 346.

(b) The words in brackets to be used if the wife takes a life interest.

WILLS.
No. 66.

Income to be
paid to each
daughter for
her life.

investments representing the same, and the accumulations of income if any made during her minority and discoveriture which investments and accumulations are hereinafter included in the description of such daughter's share (subject to any advancement made or to be made for her benefit under the aforesaid power of advancement), UPON TRUST to pay the income thereof to such daughter for her life, without power of anticipation during any coverture :

AND after her death the capital and income of such daughter's share or so much thereof respectively as shall not have been paid or applied under any trust or power affecting the same shall be held [*Here add usual trusts for issue as she shall appoint, and in default for children equally adapting Form No. 64, with the omission of the words in brackets ; adapt also Hotchpot clause, Form No. 64a ; and Advancement clause, Form No. 65, and after consent in writing add and after the death of such daughter of mine or during her life with her consent in writing, and instead of or other issue of mine, say or other issue of such daughter*] :

No. 67.

Capital of
daughter's
share in
default of her
children to
accrue to other
children.

AND if there should not be any child of such daughter who under the trust in default of appointment hereinbefore contained attains a vested interest in her share, Then subject to the trusts and powers hereinbefore declared in favour of such daughter and her issue, her original share, and also any share or shares which shall have accrued under this provision, and all accumulations of income if any, shall accrue to and be held IN TRUST for my other children or child who being sons or a son attain the age of twenty-one years, or being daughters or a daughter attain that age or marry, and if more than one in equal shares, but so that every further share accruing to each daughter shall be retained and held by the trustees or trustee upon and subject to the like trusts and powers as are hereby declared concerning the original share of that daughter, and so that every further share accruing to each child of mine shall be subject to the like power of advancement as his or her original share.

Where legacies are given to daughters instead of shares of the residue then before the general devise and bequest, No. 61, say:—

WILLS.
No. 68.

Bequest of
legacies to
daughters and
settlement
thereof.

I BEQUEATH to the trustees hereinbefore named the legacy of £ with interest thereon at 4 per cent. per annum from my death for each of my daughters and her issue, AND I direct that the trustees or trustee shall stand possessed of the legacy so bequeathed for each daughter upon trust to invest the same in their or his names or name with her consent if of age, and if under age and also after her death at the discretion of the trustees or trustee, in any of the investments in which my residuary estate is authorized to be invested, with power with the like consent or at the like discretion to vary the investments thereof for others of a like nature, AND shall stand possessed of each daughter's legacy and the investments representing the same, and all statutory accumulations of income thereof (if any) hereinafter included in the description of such daughter's legacy (subject to any advancement which the trustees or trustee shall think proper to make and which I hereby authorize to be made for her benefit to any amount not exceeding one-half of each daughter's legacy) UPON TRUST [*trusts as to income for such daughter for her life, and after her death as to capital and income for her issue as she shall appoint, with hotchpot and advancement clauses, and in default for her children equally, adapting Form No. 66*].

AND if there should not be any child of a daughter who under the trust in default of appointment hereinbefore contained attains a vested interest in her legacy, Then subject to the trusts and powers hereinbefore declared in favour of such daughter and her issue, her legacy and the income thereof and all statutory accumulations, if any, of income, or so much thereof respectively as shall not have been applied under any of the powers hereinbefore contained or any statutory power, shall fall into and form part of my residuary estate.

No. 69.

In default of
children, each
daughter's
legacy to fall
into residue.

WILLS.
No. 70.

Power to
daughters to
appoint life
interests to
surviving
husbands.

I EMPOWER each daughter of mine, notwithstanding any of the trusts hereinbefore contained, from time to time or at any time while not under coverture by deed revocable or irrevocable, and whether covert or sole by will or codicil, to appoint to or for the benefit of any husband who may survive her during the residue of his life or any less period, all or any part of the annual income of her share, as well original as accrued and to accrue under the trusts aforesaid [*or of the legacy hereinbefore bequeathed to her*], or so much thereof as shall not before her death have been paid or applied under any of the powers hereinbefore contained; And I declare that upon any such appointment the trusts and powers hereinbefore limited to take effect after the death of the daughter so appointing, shall take effect only after the determination of and in the meantime subject to the interest limited by any such appointment.

No. 70a

Power to
daughters
to appoint
separate
trustees.

I EMPOWER each daughter of mine by deed with the assent of the trustees or trustee for the time being of my will to appoint two or more separate trustees of her share (as well original as accrued and to accrue) in my residuary estate, and thereupon that share or the investments representing the same shall as soon as may be, be paid or transferred to such separate trustees upon the trusts hereby declared concerning the same, and thereupon the trustees or trustee of my will shall no longer be responsible in relation thereto, And thenceforth during the residue of the life of such daughter a new trustee or new trustees thereof may be appointed by her.

No. 71.

Trustees on
marriage of
daughter may
declare other
trusts of her
share [*or
legacy*].

I DECLARE that notwithstanding the trusts hereinbefore contained respecting the share of [*or the legacy hereinbefore bequeathed to*] each daughter of mine as aforesaid, the trustees or trustee may by deed executed by them or him previously to and in consideration of the marriage of any such daughter, but with the consent of her and her intended husband if she have then attained the age of twenty-one years, or otherwise with the consent of such intended husband and of her guardian or guardians, re-

voked from and after the intended marriage all or any of the trusts, powers, and provisions hereinbefore declared concerning the share [*or the legacy*] of the same daughter, and may either direct the whole or any part or parts thereof to be held immediately after the marriage in trust for her intended husband absolutely, or may declare and limit such other trusts, powers, and provisions to take effect after the intended marriage, and concerning the same share [*or legacy*], or any part or parts thereof, as to the trustees or trustee with such consent as aforesaid shall seem proper, and if thought expedient may constitute any other persons or person trustees or trustee of the same share [*or legacy*], and may transfer the same to such persons or person accordingly, whose receipt in writing shall be a sufficient discharge for the same. I declare that the power lastly hereinbefore contained may be exercised in contemplation of a second or any subsequent marriage of the same daughter, but nevertheless without prejudice in any respect to any previous exercise thereof on the occasion of any earlier marriage.

WILLS.
No. 71.

I DECLARE that any sum which on the marriage of any daughter of mine shall be paid to her, or settled by me on such marriage, shall be taken as being so paid or settled in or towards satisfaction of her share in my residuary estate [*or the legacy hereinbefore bequeathed to her*].

No. 72.

Declaration
that sum paid
or settled be
taken as part
of legacy.

I DECLARE that notwithstanding the trust for sale of my real estate hereinbefore contained the trustees or trustee may, if they or he think proper, raise any sum or sums for the payment of all or any of my funeral and testamentary expenses and debts, and the legacies bequeathed hereby or by any codicil hereto (whether my personal estate shall be deficient or not, and without the necessity of applying any personal estate in making any such payment) by mortgage of all or any part of my real estate upon such terms as the trustees or trustee shall think fit, And may convey the hereditaments so to be mortgaged to any person or persons, either in fee, or for

No. 73.

Power to
mortgage for
payment of
debts, &c.

WILLS.
No. 73.

any term of years, with or without impeachment of waste or otherwise, by way of mortgage for securing payment of the money raised and interest thereon, and with such powers as may be thought expedient, and may for such purposes as aforesaid execute and do all such assurances and things as the trustees or trustee shall think fit, And no mortgagee shall be concerned to inquire whether any money is wanted for the purposes of my will, or whether more than is wanted is raised.

No. 74.

Power to apportion.

I DECLARE that [*continue as in Form No. 43*].

No. 75.

* Trustee or executor may employ agent, &c.

* I DECLARE that any trustee or executor [*continue as in Form No. 45*].

No. 76.

† Professional trustee or executor to be allowed to charge.

† I DECLARE that any trustee or executor [*continue as in Form No. 45a*].

No. 77.

‡ Nomination of person to appoint new trustees.

‡ I DECLARE that [my wife during her life] shall have power to appoint a new trustee or new trustees of my will (a).

§ In witness whereof I have here unto set my hand the day and year first above written (b).

[*Testator's signature.*]

No. 78.

§ Testimonium and attestation clause to will or codicil.

Signed and declared by the above named as [a codicil to] his last will in the presence of us both present at the same time, who in his presence and the presence of each other have hereunto set our hands as witnesses.

[*Two witnesses, adding addresses, and descriptions if any (c).*]

Statutory provisions.

The statutory provisions referred to at p. 250 are applicable also to wills, and should be omitted.

Devolution of trust and mortgage estates.

Trust and mortgage estates devolve now on executors or administrators either at common law or under C. A. s. 30, and a devise of them should also be omitted.

(a) The appointment will be made under C. A., s. 31.

(b) The date is at the beginning.

(c) The addresses and descriptions of the witnesses are not necessary, but are convenient for identification.

CHAPTER V.
PRECEDENTS.

SECT. I.

PURCHASE DEEDS.

CONVEYANCE BY MORTGAGEES OR TRUSTEES AND BENEFICIAL OWNER under C. A. s. 7 (1) A. and F.
(*Witnessing part.*)

PURCHASE
DEEDS.
I.

C. A. s. 7 (1),
A. & F.

MORTGAGEES
OR TRUSTEES
AND BENEFICIAL OWNER.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of &c., A. and B. AS MORTGAGEES [*or TRUSTEES*] and according to their estate and by the direction of X. hereby convey, and X. as BENEFICIAL OWNER hereby conveys and confirms unto, &c. [See C. A. Schedule 4, Form III.]

This form implies a several covenant by the mortgagees or trustees, that they have not incumbered or done any act to prevent them from conveying, &c.: C. A. s. 7 (1) F. This being a covenant by "every person," the word "person" does not admit of being read in the plural, and the covenant is, moreover, expressly confined to the person's own acts. So that making two persons jointly convey "as mortgagees" or "as trustees" has not, as in other cases, the effect of a joint covenant.

Covenant F
not joint.

The form also implies a covenant for title by X. that notwithstanding anything by him, or any one through whom he derives title otherwise than by purchase for value, &c., he with the concurrence of the mortgagees or trustees can convey, &c.: s. 7 (1) A.

A mortgagee or trustee, except where he is selling, conveys by reference to his mortgage or trust deed. If he conveys by substantive description it is usual to add the words "according to his estate."

Mortgagee
or trustee
conveys only
according to
his estate
except on
selling.

"Convey" is used in this and some other forms, but it is not a necessary word.

PURCHASE
DEEDS.

II.

C. A. s. 7 (2),
(7).TRUSTEES AND
TENANT FOR
LIFE.

CONVEYANCE by TRUSTEES of the power of sale and exchange in a settlement by the direction of the TENANT FOR LIFE under C. A., s. 7 (2) with a variation under subs. 7. (*Witnessing part.*)

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of &c., and in exercise of the power given by the hereinbefore recited indenture of &c., A. and B. AS TRUSTEES, and by the direction of X. directing AS BENEFICIAL OWNER, do hereby revoke all the limitations now subsisting under the said recited indenture concerning the lands and hereditaments hereinafter mentioned, and do hereby appoint and convey All &c., To the use, &c.

Under C. A. s. 7, A, and subs. (2) this form implies a covenant by X. that notwithstanding anything by him, or any one through whom &c. (which includes the settlor) he has, with the concurrence of the trustees, power to convey, &c. If it is desired to restrict the covenant of X. to his own life estate add the proviso in Form No. 1, *supra*.

This precedent is retained in this edition as an illustration of the covenant referred to in the note to C. A. s. 7 (2), *supra*, and it may still be used if required. The Settled Land Act, 1882, s. 56 (2), still permits trustees, with the consent of the tenant for life, to sell under the power in the settlement.

III.

C. A. s. 7 (3).
HUSBAND AND
WIFE (WIFE
BENEFICIAL
OWNER).

CONVEYANCES BY HUSBAND AND WIFE under C. A.
s. 7 (3). (*Witnessing part.*)

1. NOW THIS INDENTURE WITNESSETH that in pursuance &c., A. S., AS BENEFICIAL OWNER, with the consent of B. S. her husband, hereby conveys and disposes of [*or appoints*] unto &c.

This form implies a covenant for title on the part of the wife only, but no covenant on the part of the husband. Conveyance includes appointment, and "convey" includes "appoint."

2. NOW THIS INDENTURE WITNESSETH &c., that A. S. AS BENEFICIAL OWNER, with the concurrence of B. S. her husband, hereby conveys and disposes of, and B. S. AS BENEFICIAL OWNER hereby conveys and confirms unto &c.

PURCHASE
DEEDS.

IV.

HUSBAND AND
WIFE (BOTH
BENEFICIAL
OWNERS).

This form implies a covenant for title on the part of the wife that notwithstanding anything by her &c., she has &c., and binds her present and future separate estate, which she is not restrained from anticipating (M. W. P. A., ss. 1, 19), and also a covenant for title by the husband that notwithstanding anything by him &c., he has &c., and also a covenant by him in the same terms as the implied covenant of the wife, namely, "That notwithstanding anything by her &c., she has" &c.

This form is applicable to the ordinary case of a conveyance by husband and wife of the wife's freeholds acquired before 1883, and not settled to her separate use, and the deed must be acknowledged by her under 3 & 4 Will. 4, c. 74, ss. 77, 79, as amended by C. A., 1882, s. 7. If the property was acquired after 1882, she can convey it as a *feme sole* without the concurrence of her husband and without acknowledgment.

CONVEYANCES BY TENANTS IN COMMON. (*Witnessing part.*)

V.

1. NOW THIS INDENTURE WITNESSETH that in consideration of &c., A. as to the one undivided moiety to which he is entitled and AS BENEFICIAL OWNER, and B. as to the other undivided moiety to which he is entitled and AS BENEFICIAL OWNER, hereby conveys unto &c.

TENANTS IN
COMMON.
Several cove-
nant as to
each moiety.

This form implies covenants by A. and B. severally each as to *his own moiety*.

2. NOW THIS INDENTURE WITNESSETH that in consideration of &c., each of them, A., B., C., &c., as to the undivided share to which he is entitled as hereinbefore recited, and AS BENEFICIAL OWNER, hereby conveys unto &c.

VI.

Several cove-
nant as to
recited shares.

This implies a several covenant by each as to *his share* shewn by recital.

PURCHASE
DEEDS.
VII.

JOINT
TENANTS.
Several cove-
nant as to
entirety.

CONVEYANCES BY JOINT TENANTS. (*Witnessing part.*)

1. NOW THIS INDENTURE WITNESSETH that in consideration, &c., A. AS BENEFICIAL OWNER, and also B. AS BENEFICIAL OWNER, hereby convey unto &c.

This form implies covenants by A. & B. severally each as to the *entirety*. As to when a purchaser is entitled to joint and several covenants, see second note to Precedent X.

VIII.

Several cove-
nant as to
entirety.

2. NOW THIS INDENTURE WITNESSETH, &c., that each of them, A., B., and C., as to his own undivided share to which he is entitled as hereinbefore recited, and AS BENEFICIAL OWNER, and also by the direction of each of the others of them directing AS BENEFICIAL OWNER, hereby conveys unto &c.

This implies a several covenant by each as to the shares of the others as well as his own: C. A. s. 7 (2); and gives in another form a several covenant as to the entirety.

IX.

Joint covenant
as to entirety.

3. NOW THIS INDENTURE WITNESSETH that in consideration of &c., A. and B., AS BENEFICIAL OWNERS, do hereby convey unto &c.

This implies a joint covenant by A. and B. as to the entirety that notwithstanding anything by them &c., they have full power &c.

X.

Joint and
several cove-
nant.

4. NOW THIS INDENTURE WITNESSETH that in consideration of &c., A. and B., AS BENEFICIAL OWNERS, do and also each of them AS BENEFICIAL OWNER and by the direction of the other of them DIRECTING AS BENEFICIAL OWNER doth hereby convey unto &c.

This implies a joint covenant by A. and B. as to the entirety that notwithstanding anything by them &c., they have full power to convey &c., and also a several covenant by each that notwithstanding

anything by him &c., he with the concurrence of the other has full power to convey &c.

Where the sale is made without any special agreement as to covenants it is conceived that the purchaser is entitled to the joint and several covenants by all tenants in common as to the entirety.

PURCHASE
DEEDS.
X.
—

CONVEYANCE BY TENANT FOR LIFE AND REMAINDER-
MAN. (*Witnessing part.*)

NOW THIS INDENTURE WITNESSETH that in consideration of &c., each of them A. and B. AS BENEFICIAL OWNER, and by the direction of the other of them DIRECTING AS BENEFICIAL OWNER, hereby conveys unto &c.

XI.
—
TENANT FOR
LIFE AND RE-
MAINDERMAN.

In this form a several covenant is implied by each as to the entire fee that notwithstanding anything by him &c., he with the concurrence of the other has full power to convey &c.

The covenant of each of them severally may if desired be restricted to his own estate, so far as regards the tenant for life by a proviso similar to that in Form No. 1, *supra*, and so far as regards the remainderman by the following proviso—

PROVIDED ALWAYS, that so far as regards the life estate of A. [*tenant for life*] in the said hereditaments intended to be hereby conveyed, and the title to and further assurance of the same hereditaments during his life the covenant by B. [*remainderman*] in these presents implied by statute shall not extend to the acts, deeds, or defaults of any person other than and besides B. and his own heirs and persons claiming or to claim under or in trust for him, them, or any of them.

Proviso
restricting the
covenants of the
remainderman.

CONVEYANCE OF FREEHOLDS by BENEFICIAL OWNER.

XIA.
—

THIS INDENTURE made the day of 18 , Parties.
Between of , hereinafter called the vendor, of
the one part, and of , hereinafter called the
purchaser, of the other part.

WHEREAS the vendor is now seised in fee simple in Recitals.

PURCHASE
DEEDS.
XIA.
—

Testatum
Conveyance.

possession free from incumbrances of the hereditaments hereinafter conveyed (a), and has agreed to sell the same to the purchaser for the like estate in possession free from incumbrances at the price of £

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the sum of £ paid by the purchaser to the vendor (the receipt of which sum the vendor hereby acknowledges), The vendor AS BENEFICIAL OWNER hereby conveys unto the purchaser (b) All that &c., situated &c., more particularly described in the [first] schedule hereto, and intended to be delineated on the plan indorsed on these presents and therein edged

Parcels.
Habendum.

To HOLD unto and to the use of the purchaser in fee simple.

[*Add, if required, Acknowledgment by vendor of right of purchaser to production of documents of title in schedule, and to delivery of copies thereof, and Undertaking for safe custody thereof, Form No. 3.*]

In witness, &c.

THE [FIRST] SCHEDULE ABOVE REFERRED TO.

[*Parcels.*]

[*Add, if required for documents, THE SECOND SCHEDULE ABOVE REFERRED TO.*]

General words and the all estate clause are supplied by C. A. ss. 6, 63; and covenant A of s. 7 (1) of that Act is implied.

(a) See *Bolton v. London School Board*, 7 Ch. D. 766, as to the effect of this recital, and see note thereon, p. 12, *ante*.

(b) Where recitals are dispensed with the witnessing part should commence thus—

WITNESSETH that in consideration of the sum of £ paid by the purchaser to the vendor for the purchase of the hereditaments hereinafter mentioned in fee simple in possession free from incumbrances, the receipt of which sum the vendor hereby acknowledges, The vendor AS BENEFICIAL OWNER hereby conveys unto the purchaser All that &c.

Following the forms in the 4th schedule of the C. A. (which by s. 57 are declared to be sufficient) the "premises" (the part preceding the *habendum*) need not contain words of limitation; the estate to be taken may be defined only in the *habendum*. This is a return to the original office of the premises. The practice of limiting the estate both in the premises and in the *habendum* is stated by Sheppard in his *Touchstone* to be improper, though it has been generally adopted: *Shep. Touch.* by Preston, c. v. p. 74.

"Fee simple" is used in these Precedents in accordance with C. A., s. 51. The word "assigns," which is usually added is omitted generally in these Precedents as superfluous (see note, p. 274), except in Nos. XXX. and XXXII., for the reason stated in note (a) to No. XXX.

PURCHASE
DEEDS.
XIA.

Quantity of
estate not
defined on the
premises.

For a short CONVEYANCE of FREEHOLDS BY MORTGAGOR AND MORTGAGEE, see C. A. 4th Sched. Form III., and Preced. I.

CONVEYANCE of FREEHOLDS by the EXECUTOR of the SURVIVOR of DECEASED MORTGAGEES under the power of sale conferred by the C. A.

XII.
FREEHOLDS.

THIS INDENTURE made &c., 1883, Between X. of &c. [vendor] of the one part and B. of &c. [purchaser] of the other part.

Parties.

WHEREAS by an Indenture dated &c. 1882, and made between A. of the one part and M. and N. (both since deceased) of the other part, the hereditaments hereinafter mentioned were conveyed by A. as beneficial owner to the use of M. and N. in fee simple by way of mortgage for securing payment by A. to M. and N. of £1000 advanced by them on a joint account to A. with interest on the day therein mentioned and since passed:

Recitals.
Mortgage.

AND whereas M. died on &c., 1882, and N. died on &c. 1883, having by his will dated &c. appointed the said X. his sole executor who proved the same in the Principal Probate Registry on &c.

Death of
mortgagees
and will of
survivor.

PURCHASE
DEEDS.
XII.

That principal
and interest
due.

Testatum.

Conveyance.

Parcels.

Habendum.

AND whereas the said sum of £1000 and an arrear of interest thereon are still due to the said X. as such executor as aforesaid upon the hereinbefore recited indenture :

NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £2000 paid to X. by B. for the purchase of the fee simple of the hereditaments hereinafter mentioned, the receipt of which sum X. hereby acknowledges, X. AS THE PERSONAL REPRESENTATIVE of N. deceased, hereby in exercise of the power of sale conferred by the Conveyancing and Law of Property Act, 1881, conveys and releases unto B. All that &c.

TO HOLD unto and to the use of B. in fee simple discharged from all money secured by and all claims under the recited indenture.

In witness &c.

The mortgage estate devolves upon the executor of the last surviving mortgagee under C. A. s. 30, with the right to exercise the power of sale, which is by s. 19 made incident to the estate of mortgagees under a deed executed after 1881.

General words and the all estate clause are supplied by C. A., ss. 6, 63.

Covenant F of s. 7 (1) is implied by the executor.

Conveyance
under power
of sale in C. A.
by mortgagee.

The conveyance must be made in professed exercise of the power of sale conferred by the C. A. in order to give to the purchaser the protection of s. 21 (2) against irregularities in the sale.

XIIA.

CONVEYANCE of FREEHOLDS under A TRUST FOR SALE.

FREEHOLDS.
UNDER TRUST
FOR SALE.

Parties.

Recitals.

Settlement.

THIS INDENTURE made &c. between R. N. of &c., and R. L. of &c. [*trustees for sale*] of the first part, R. W. of &c. [*person requesting the sale*] of the second part, and X. Y. of &c. [*purchaser*] of the third part.

Whereas by an Indenture dated &c. and made between the said R. W. of the first part, H. A. of the second part, and the said R. N. and R. L. of the third part (being a conveyance made in consideration of the marriage then intended and since solemnized between the said R. W.

and H. A.), the pieces of land and hereditaments herein-after mentioned were [with other hereditaments] conveyed To the use of the said R. N. and R. L. in fee simple after the solemnization of the said marriage Upon trust to sell the same at the request in writing of the said R. W., And to stand possessed of the net proceeds of such sale, and also of the rents and profits of the premises until sale, Upon the trusts and subject to the powers and provisions declared concerning the same by an Indenture therein referred to bearing even date therewith.

PURCHASE
DEEDS.
XIII.
—

And whereas the said R. N. and R. L. as such trustees as aforesaid, have at the request of the said R. W. testified by his execution of these presents, agreed to sell to the said X. Y. the said pieces of land and hereditaments hereinafter mentioned and the fee simple thereof in possession free from incumbrances, at the price of £ .

Agreement for
sale.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £ upon the execution of these presents paid to the said R. N. and R. L. as such trustees as aforesaid, by the said X. Y., the receipt whereof the said R. N. and R. L. hereby acknowledge, the said R. N. and R. L. at the request of the said R. W., testified as aforesaid, and AS TRUSTEES hereby convey unto the said X. Y.

Testatum.
Conveyance.

All those pieces of land situated in the parish of &c. in the county of , containing a. r. p., or thereabouts, a particular whereof is contained in the first schedule hereto, and which are intended to be delineated on the plan indorsed on these presents and therein coloured

Parcels.

To HOLD UNTO AND To THE USE of the said X. Y. in fee simple.

Habendum.

[Add acknowledgment by the trustees as to production of the settlement, and (if all the settled lands are not sold) also of the recited conveyance and other documents, Form No. 3.]

In witness &c.

PURCHASE
DEEDS.
XIII.

THE FIRST SCHEDULE ABOVE REFERRED TO.
[*Parcels.*]

THE SECOND SCHEDULE ABOVE REFERRED TO.
[*Deeds.*]

General words and the all estate clause are supplied by C. A. ss. 6, 63, and Covenant F of s. 7 is implied by the trustees.

If there is no order under the Settled Land Act, 1884, s. 7, enabling the tenant for life of the proceeds of sale to sell, the trustees remain by virtue of s. 6 (1) of that Act the proper persons to sell.

XIII. CONVEYANCE OF LEASEHOLDS. (*Witnessing part.*)

LEASEHOLDS.

C. A. s. 7 (1),
A. and B.

[*For recitals and ultimate devolution of lease, see PRECED. Nos. XIV. and XVI. post.*]

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of &c., the said A. B. AS BENEFICIAL OWNER hereby conveys unto C. D.

All the said premises demised by the hereinbefore recited lease [which premises are now known as (*add if necessary a modern description*)]

To HOLD to C. D. during the residue of the term granted by the said lease at the rent and subject to the lessee's covenants and the conditions by and in the said lease reserved and contained and henceforth to be paid and observed [*add covenant by purchaser to pay rent, &c., Form No. 2*]. In witness &c.

This form implies the covenants by the vendor, C. A. s. 7 (1), A. and B. General words are supplied by s. 6.

Why executors,
administrators,
and assigns
omitted.

The words "executors, administrators, and assigns," usually added in assignments of leaseholds are superfluous; the executors or administrators take the personal estate of the assignee at Common Law, and the word "assigns" is not a word of limitation: Williams, R. P. 145, 12th ed.; *Osborne v. Rowlett*, 13 Ch. D. 777, per M.R.

The word "absolutely" may be used in an absolute assignment of personalty, and where the assignment is for a limited interest, as in leaseholds, the *habendum* may express that interest.

CONVEYANCE OF FREEHOLDS AND LEASEHOLDS TO THE
USES AND UPON THE TRUSTS OF A WILL, A MORT-
GAGEE CONCURRING.

PURCHASE
DEEDS.
XIV.

FREEHOLDS
AND LEASE-
HOLDS.

Parties.

THIS INDENTURE made the day of 188 ,
between C. S. of &c. [*mortgagee*], of the first part, A. H.
of &c. [*vendor*], of the second part, H. D. of &c. [*tenant*
for life], of the third part, and E. L. of &c., and L. P.
of &c., of the fourth part :

Whereas A. H. is seised in fee simple free from in-
cumbrances of the freehold hereditaments hereinafter
mentioned and conveyed by the first witnessing part of
these presents :

Recitals.—
Selsin of the
freeholds by
A. H.

And whereas by an indenture dated the 1st day of
June, 1651, and made between J. W. of the one part, and
J. E. of the other part, the said J. W. demised All that
&c., unto the said J. E. for the term of one thousand
years without impeachment of waste under the yearly
rent of a peppercorn :

Demise of
the leaseholds.

And whereas, after divers mesne assignments and acts
in the law, ultimately under an indenture dated &c., the
premises so demised became vested in J. H., deceased, for
the residue of the said term of one thousand years :

Devolution of
leaseholds.

And whereas by an indenture of mortgage dated &c.,
and made between the said J. H. of the one part, and the
said C. S. of the other part, the said J. H. assigned the
said demised premises unto the said C. S. for the residue
of the said term of one thousand years by way of mortgage
for securing the sum of £ and interest thereon :

Mortgage
thereof.

And whereas the said J. H. died on &c., having by his
will, dated &c., appointed his son the said A. H. his
executor, and bequeathed to him the said demised pre-
mises and he proved the said will on &c., in the
Principal Probate Registry :

Will and death
of mortgagor.

And whereas E. G. D., late of &c., deceased, duly made
his will dated &c., and thereby devised all his real
estate in the counties of &c., To the use of his eldest
son the said H. D. during his life, without impeachment

Will of the
testator to the
uses whereof
the convey-
ance is to be
made, and
under which
H. D. is tenant
for life.

PURCHASE
DEEDS.
XIV.

Power to his
trustees to
sell and
exchange,

and invest the
proceeds in the
purchase of
hereditaments.

Codicil sub-
stituting E. L.
as a trustee
instead of one
of the original
trustees.

of waste, with remainders to his issue male and to other sons and their issue male; and the said will contained divers powers and provisions, including a power to C. J. S. and E. B. W. (the trustees therein named) during the life of each of the testator's sons thereby made tenants for life, who for the time being should be entitled to the possession or receipt of the rents and profits of the said hereditaments thereby devised (with his consent in writing), to sell or exchange in manner therein mentioned, the hereditaments subject to the limitations of the said will; And the said testator declared that the said C. J. S. and E. B. W. should receive the money arising by any such sale and invest the same in the purchase of hereditaments in England or Wales for an estate of inheritance in fee simple, or of lands of a leasehold or copyhold or customary tenure convenient to be held therewith or with any hereditaments for the time being subject to the subsisting uses of that his will, so that during the life of any person thereby made tenant for life who should for the time being be entitled as aforesaid, every such purchase should be made with his consent in writing, And should cause the hereditaments so purchased to be settled and assured to the uses, upon the trusts, and subject to the powers and provisions in the said will declared concerning the hereditaments thereinbefore devised in strict settlement, or as near thereto as the deaths of parties and other intervening circumstances would admit of, but not so as to increase or multiply charges, and so that if any of the lands purchased or taken in exchange should be held by a lease for years the same should not vest absolutely in any person thereby made tenant in tail male by purchase who should not attain the age of twenty-one years, but on his death under that age should devolve in the same manner as if they had been freeholds of inheritance and had been settled accordingly; And the said will contained a power to appoint new trustees:

And whereas the said E. G. D. made a first and second codicil dated respectively &c., to his said will not affecting his said will so far as hereinbefore recited, and also made

a third codicil dated &c. to his said will, and thereby in effect substituted the said E. L. as a trustee of his said will in the place of the said E. B. W., and devised and gave to the said C. J. S. and E. L. the same estates and powers as were by the said will devised and given to the said C. J. S. and E. B. W. :

PURCHASE
DEEDS.
XIV.
—

And whereas the said testator died on &c., without having revoked the said will and codicils, which were duly proved in the Principal Probate Registry on &c.

Death of last-mentioned testator, and probate of his will.

And whereas by an indenture dated &c., and made between the said H. D. of the first part, the said C. J. S. of the second part, the said E. L. of the third part, and the said L. P. of the fourth part, the said L. P. was under the aforesaid power in the said will duly appointed a trustee of the said will and codicils in the place of the said C. J. S. :

Appointment of L. P. as trustee of that will.

And whereas the said E. L. and L. P. as such trustees as aforesaid, and with the consent of the said H. D., have agreed with the said A. H. for the purchase of the freehold hereditaments hereinafter mentioned and also of the said leasehold premises comprised in the said term of one thousand years, for all the residue of that term free, as to all the said premises, from incumbrances at the price of £ :

Agreement to purchase.

And whereas the principal sum of £ and no more is now owing to the said C. S. on the security of the hereinbefore recited mortgage, all interest thereon having been paid, as he hereby acknowledges, and he has agreed on receiving the sum so due to him to join in these presents as hereinafter appearing :

Mortgage debt still due.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of £ paid to the said A. H. and of the further sum of £ paid to the said C. S., as hereinafter mentioned, by the direction of the said A. H., and making together the total purchase-money of £ paid to or at the request of the said A. H. by the said E. L. and L. P. out of money in their hands as such trustees as aforesaid (the payment

First testatum. Conveyance of the freeholds.

PURCHASE
DEEDS.
XIV.
—

and receipt as aforesaid of which sum of £ the said A. H. hereby acknowledges), the said A. H. AS BENEFICIAL OWNER hereby conveys unto the said E. L. and L. P.

All that &c., containing statute measure or thereabouts, now in the occupation of M. as tenant thereof, which said premises are intended to be more particularly described in the first schedule hereto and to be delineated in the plan drawn in the margin of these presents, and to be therein coloured , and all other (if any) the lands and hereditaments comprised in the said schedule,

Habendum,

To HOLD unto the said E. L. and L. P. in fee simple, To the uses, upon the trusts, and subject to the powers and provisions by the said will and codicils of the said E. G. D. declared and now subsisting concerning the hereditaments in England and Wales devised by the said will and the third codicil thereto as aforesaid.

Further
testatum.
Conveyance of
the leaseholds
released from
mortgage.

AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and in consideration of the sum of £ upon the execution of these presents by the direction of the said A. H. paid to the said C. S., the receipt of which sum of £ the said C. S. hereby acknowledges, The said C. S. AS MORTGAGEE, by the direction of the said A. H., hereby conveys and releases, and the said A. H. AS BENEFICIAL OWNER hereby conveys and confirms Unto the said E. L. and L. P.

All the said premises comprised in and demised by the said indenture of the 1st day of June, 1651, a particular whereof is intended to be contained in the second schedule hereto,

Habendum.

To HOLD unto the said E. L. and L. P. for the residue of the said term of one thousand years granted by that indenture, and discharged from all principal money and interest secured to the said C. S. as aforesaid, Upon the trusts and subject to the powers and provisions by the said will and codicils of the said E. G. D. declared or directed to be declared, and now subsisting, concerning leasehold hereditaments purchased with money arising

by the sale of any of the hereditaments in England and Wales by the said will and third codicil devised as aforesaid.

PURCHASE
DEEDS.
XIV.

[Add, if required, an Acknowledgment by A. H. of right to production of documents in the Third Schedule, and to delivery of copies thereof, and Undertaking for safe custody, Form No. 3.]

In witness &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

[Description of freeholds.]

THE SECOND SCHEDULE ABOVE REFERRED TO.

[Description of leaseholds.]

[Add if required for documents, THE THIRD SCHEDULE ABOVE REFERRED TO.]

This Precedent implies covenant F by the mortgagee, and covenants A and B by the vendor, C. A. s. 7 (1), and see notes to Precedents XIA. and XIII.

See a further PRECEDENT of PURCHASE DEED, No. XXXII., *post*.

MORTGAGES.

SECT. II.

MORTGAGES AND FURTHER CHARGES.

For a PRECEDENT of a MORTGAGE IN FEE, without special provisions, see C. A., Schedule 4, Form I.

For a PRECEDENT of a MORTGAGE IN FEE to secure a consolidated debt, see Preced. XXVI. *post*.

XV.
FREEHOLDS.

MORTGAGE IN FEE, with provisions for reduction of rate of interest; continuance of loan; restricting mortgagor's power of leasing; and authorizing consolidation.

Parties.

THIS INDENTURE made the &c., between A., of &c., [mortgagor] of the one part, and B. of &c., and C. of &c., [mortgagees] of the other part:

First
testatum.
Covenant for
payment.

WITNESSETH that in consideration of £5000 paid to A. by B. and C. out of money belonging to them on a joint account, of which sum A. hereby acknowledges the receipt, A. hereby covenants [*here insert covenant to pay principal and interest, Forms No. 4 and 4b*]:

Second
testatum.
Conveyance
of freeholds.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid A. AS BENEFICIAL OWNER hereby conveys unto B. and C.

All that &c. situated &c. and particularised in the schedule hereto

Habendum.

To HOLD unto and to the use of B. and C. in fee simple Subject to the proviso for redemption following—

[*Proviso for redemption, Form No. 6;*

Covenant for insurance against fire, if required, Form No. 9;

Provision for reduction of interest, Form No. 10 or 11;

For continuing the loan, Form No. 12;

*Authorizing consolidation of mortgages, Form No. 13 ;
And for restricting mortgagor's power of leasing without
the consent of mortgagee, Form No. 15].*

In witness &c.

MORTGAGES.

XV.

THE SCHEDULE ABOVE REFERRED TO.

[Description.]

General words and the all estates clause are not required: see C. A., ss. 6, 63; nor are powers to sell, to appoint a receiver, to lease and to give receipts, nor joint account clause: see C. A. ss. 18-22, 24, 61, and summary of mortgagee's powers, p. 57, *ante*. Covenant (C.) of C. A. s. 7 is implied.

MORTGAGE OF LEASEHOLDS.

XVI.

LEASEHOLDS.

THIS INDENTURE made the day of 18 ,
between T. G. of &c. [*mortgagor*] of the one part and Parties.
J. P. D. of &c. and W. W. of &c. [*mortgagees*] of the
other part :

Whereas by an indenture of lease dated &c., and Recitals.—
made between M. of the one part and X. Y. of the other Lease.
part, All that piece of ground situated &c. with the mes-
suage and other buildings thereon known as &c. were
demised unto the said X. Y. for the term of ninety-nine
years from the day of &c. at the yearly rent after
the first two years of the said term of £ , payable
half-yearly on the days therein mentioned and subject
to the covenants and conditions therein contained and on
the lessee's part to be performed and observed :

And whereas after divers mesne assignments and acts Assignments,
in the law, ultimately under an indenture dated &c., and
made between &c., the said premises became and are now
vested in the said T. G. for the residue of the term
granted by the said lease :

And whereas the said J. P. D. and W. W. have agreed Agreement for
to advance, out of money belonging to them on a joint advance.
account, to the said T. G. the sum of £ upon

MORTGAGES.
XVI.

having the repayment thereof with interest as hereinafter mentioned secured in manner hereinafter appearing :

First
testatum.
Covenant to
pay.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £ paid to the said T. G. by the said J. P. D. and W. W. (the receipt of which sum of £ the said T. G. hereby acknowledges) the said T. G. hereby covenants [*here insert covenant to pay principal and interest, Forms No. 4 and 4b.*]

Second
testatum.
Demise.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said T. G. AS BENEFICIAL OWNER hereby demises unto the said J. P. D. and W. W.

Parcels.

All the premises comprised in and demised by the recited lease;

Habendum.

To HOLD to the said J. P. D. and W. W. for the residue of the term granted by the said lease, except the last three days thereof, but Subject to the proviso for redemption hereinafter contained.

[*Declaration of trust of the principal term, Form No. 5;*]

Third
testatum.
Appointment of
mortgagees
as attorneys to
assign original
term.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said T. G. hereby irrevocably nominates [*Continue power of attorney, Form No. 5a;*

Proviso for redemption, Form No. 6, substituting And for (That is to say)

Covenant to insure, Form No. 9.]

In witness, &c.

See Special Condition 27, p. 206, applicable to a sale under a mortgage framed after this precedent.

Covenants (C) and (D) of C. A. s. 7, are implied. General words are supplied by s. 6.

Powers to sell and to give receipts and joint account clause are not required, see C. A. ss. 19-22, 61, and summary of mortgagee's powers, p. 57, and see last Preced. for any special provisions required.

MORTGAGE OF COPYHOLDS.

XVII.
COPYHOLDS.

THIS INDENTURE made &c., between A. of &c. [*mortgagor*] of the one part, and B. of &c. and C. of &c. [*mortgagees*] of the other part

Parties.

WITNESSETH that in consideration of £ paid to A. by B. and C. out of moneys belonging to them on a joint account, the receipt whereof A. hereby acknowledges, A. hereby covenants [*here insert covenant to pay principal and interest, Forms No. 4 and 4b*].

First
testatum.

Covenant to
pay.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid A. as BENEFICIAL OWNER hereby covenants with B. and C. that A. and all other necessary parties will forthwith, at the cost of A., surrender into the hands of the lord or lady of the manor of in the county of according to the custom of the said manor

Second
testatum.
Covenant
to surrender
copyholds.

All that &c. situated &c. to which hereditaments the said A. was admitted tenant at a court held of the said manor on the &c.

To THE USE of B. and C. and their heirs according to the custom of the said manor at and under the accustomed rents, suits, and services, Subject nevertheless [*continue Form No. 7, for making void the surrender, followed by the charge and declaration of trust by A. until surrender*].

In witness &c.

THE SCHEDULE ABOVE REFERRED TO.

[*Description.*]

See note to mortgage of freeholds, Precedent XV., and see that Precedent for any special provisions required.

The word "heirs" is still necessary in a surrender of copyholds, see third note to C. A. s. 51.

XVIII.
FREEHOLDS,
LEASEHOLDS,
AND COPY-
HOLDS.

MORTGAGE OF FREEHOLDS, LEASEHOLDS, AND COPY-
HOLDS.

THIS INDENTURE made the &c., between A. of &c. [mortgagor] of the one part, and B. of &c. and C. of &c. [mortgagees] of the other part.

Recitals.
 Seisin of free-
 holds and
 copyholds.

WHEREAS A. is seised in fee simple of the freehold hereditaments hereinafter conveyed, and is seised for an estate of inheritance according to the custom of the manor of in the county of of the copyhold hereditaments hereinafter covenanted to be surrendered, and as to all the said premises free from incumbrances :

Lease.

And whereas by an indenture of lease dated &c. and made between X. of the one part and the said A. of the other part All that piece of land situated &c. and the messuages thereon were demised to the said A. for the term of years from the day of &c. at the rent and subject to the covenants and conditions therein contained and on the lessee's part to be performed and observed (a) :

Agreement for
 loan.

And whereas B. and C. have agreed to advance to A. the sum of £ out of money belonging to them on a joint account upon having the repayment thereof with interest as hereinafter mentioned secured in manner hereinafter appearing :

First
 testatum.
 Covenant for
 payment.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in [*continue as in the first witnessing part of Precedent XV. (Mortgage of Freeholds).*]

Second
 testatum.
 Conveyance of
 freeholds.

AND THIS INDENTURE ALSO WITNESSETH that [*continue as in the second witnessing part of the same precedent down to B. and C. in fee simple*] subject to the proviso for redemption hereinafter contained.

Schedule of
 leases.

(a) Where there are numerous leases a short recital of the mortgagor's title may be made by reference to a schedule, the first column of which should contain short descriptions of the property ; the second column the dates and parties to the leases ; the third and fourth columns the terms created and the rents reserved, and the fifth column the last assignments to the mortgagor.

AND THIS INDENTURE ALSO WITNESSETH that [*continue and adapt the second witnessing part of Precedent XVI. (Mortgage of Leaseholds), with the mortgagor's declaration of trust of the principal term.*]

AND THIS INDENTURE ALSO WITNESSETH that [*continue and adapt Power of Attorney as in the last mentioned Precedent, if required.*]

[*Proviso for redemption, Form No. 6, substituting And for (That is to say), And saying conveyed and demised respectively, instead of conveyed, And re-reconveyed and surrendered respectively instead of reconveyed.*]

AND THIS INDENTURE ALSO WITNESSETH that [*continue as in second witnessing part of Mortgage of Copyholds, Precedent XVII., with proviso for redemption of copyholds, followed by the charge and declaration of trust by A. until surrender, Form No. 7; covenant to insure, Form No. 9.*]

In witness, &c.

[*Add Schedules of parcels.*]

See notes to Mortgages of Freeholds and Leaseholds, Precedents XV. and XVI., and see Precedent XV. for any special provisions required.

MORTGAGES. XVIII.

Second
testatum.
Demise of
leasehold.
Third
testatum.
Power of
attorney for
assigning
principal
term.
Proviso for
redemption.

Fourth
testatum.
Covenant to
surrender
copyholds.

MORTGAGE OF A LIFE INTEREST AND POLICIES.

XIX.

LIFE INTEREST
AND POLICIES.
Parties.

THIS INDENTURE made the day of between
W. H. of &c. [*mortgagor*], of the one part, and A. of &c.,
B. of &c., C. of &c., and D. of &c., the estate trustees of
the Z. Life Assurance Society, a memorial of whose
names has been duly inrolled in the Central Office of the
Supreme Court of Judicature pursuant to the Z. Assur-
ance Society's Act, 18 (a), and which four persons are
hereinafter called the estate trustees, and which four per-
sons or other the estate trustees or trustee for the time
being of the said society are hereinafter called the estate
trustees or trustee [*mortgagees*], of the other part:

(a) See Guardian Assurance Company's Act, 1850, Legal and General Act, 1878, &c.

MORTGAGES.
XIX.

Recital that
mortgagor is
tenant for life
of the C.
estate,

Whereas under the will dated &c., and proved in the Principal Probate Registry on &c., of the late W. H., the father of the said W. H., party hereto, who died on &c., and of which will G. and J. are the present surviving trustees, and under an indenture dated &c., and made between &c., being a conveyance to the uses of the said will, the messuages, lands, and hereditaments, forming the C. estate in the county of G., hereinafter mentioned and demised, stand limited subject to the incumbrances mentioned in the second schedule hereto, to the use of the said W. H., party hereto (hereinafter called simply W. H.), during his life without impeachment of waste, with remainders over :

And of the
investments of
settled money,

And whereas under an indenture of settlement dated &c., and made between &c., the said W. H. is now entitled to receive during his life the annual income of the investments now held on the trusts of the said settlement, or of the varied investments for the time being representing the investments so now held, which investments so now held are standing in the joint names of M. and N. as the present trustees of the said settlement, and are described in the third schedule hereto :

And entitled
to policies on
his life.

And whereas the said W. H. is entitled to the two policies of assurance effected in his own name and on his own life hereinafter mentioned and assigned (a) :

Agreement for
loan.

And whereas the estate trustees have agreed to advance to the said W. H. the sum of £ upon having the payment thereof with interest as hereinafter mentioned secured as hereinafter appearing :

(a) If the policies are numerous this recital may run thus—

And whereas the said W. H. is entitled to the [six] several policies of assurance effected in his own name and on his own life, the particulars whereof are contained in the 4th schedule hereto.

In the witnessing part assigning the policies the description will be—

All those [six] policies of assurance on the life of the said W. H. mentioned in the 4th schedule hereto, and all money to become payable thereunder.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the sum of £ paid to the said W. H. by the estate trustees out of money belonging to them as such trustees (the receipt of which sum of £ the said W. H. hereby acknowledges), the said W. H. hereby covenants with the estate trustees that he will on the day of next pay to the estate trustees or trustee [*adapt Forms No. 4 and 4b, for payment to "the estate trustees or trustee" of principal and interest*].

MORTGAGES.
XIX.

First
testatum.
Covenant for
payment.

AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and for the consideration aforesaid, the said W. H. AS BENEFICIAL OWNER hereby grants and demises unto the estate trustees

Second
testatum.
Demises of
life estate.

All that mansion-house called C., with the lands thereto belonging, and all the manors, messuages, lands, tithes, rents, and hereditaments, in the parishes of N. and B. in the county of G., containing together acres or thereabouts, the particulars whereof are contained in the

The form of the schedule will be—

FOURTH SCHEDULE ABOVE REFERRED TO.

1	2	3	4	5	6
—	Date of Policy.	Office in which effected.	Number of Policy.	Sum Assured exclusive of Bonus.	Annual Premium.
1	10th May, 1870	Z. Society.	1001	4000	80 0 0
2	1st June, 1871	Y. Company	10,400	5000	104 2 6
&c.	&c.	&c.	&c.	&c.	&c.

If it is necessary in the body of the draft to refer to any particular policy as being subject to a charge or otherwise, it may be referred to as—

The policy N^o. 1 in the first column of the fourth schedule hereto.

MORTGAGES
XIX.

1st schedule hereto, And all other (if any) the lands and hereditaments now subject to the limitations of the will of the said W. H., deceased ;

Habendum.

TO HOLD unto the estate trustees for the term of ninety-nine years from the date of these presents if the said W. H. should so long live without impeachment of waste, Subject to the several incumbrances mentioned in the 2nd schedule hereto, and Subject also to the proviso for redemption hereinafter contained.

Third
testatum.

Assignment of
life interest in
investments,

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said W. H. as BENEFICIAL OWNER hereby assigns unto the estate trustees

First All the annual income to arise during the life of the said W. H. from the investments mentioned in the 3rd schedule hereto, or from the varied investments for the time being representing the same, and all other (if any) the annual income to which he is now or may become entitled under the said settlement ;

and of policies.

Secondly, All those two policies of assurance on the life of the said W. H., the first for the sum of £ effected with the Z. Life Assurance Society dated &c., numbered &c., and at the annual premium of £ , and the second for the sum of £ effected with the X. Life Office dated &c., numbered &c., and at the annual premium of £ , and the said sums of £ and £ assured by and all other money to become payable under the said policies, and the full benefit of the said policies,

Habendum.

TO HAVE AND RECEIVE the same unto the estate trustees subject to the proviso for redemption hereinafter contained,

[Proviso for redemption on payment "to the estate trustees or trustee" of principal and interest, Form No. 6 ;

Covenant to keep up life policies, Form No. 8 ;

Provision for reduction of interest, Form No. 10 ;

Agreement that money shall remain for a time certain, Form No. 12.]

In witness &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

MORTGAGES.
XIX.
—

[Description of hereditaments of which mortgagor is tenant for life.]

THE SECOND SCHEDULE ABOVE REFERRED TO.

[Incumbrances: see *Preced. XXVI., 2nd schedule.*]

THE THIRD SCHEDULE ABOVE REFERRED TO.

[Investments to which mortgagor is entitled for life.]

Trust for application of policy money and other money and power to give receipts are not required, see C. A. s. 22, nor power of sale, see C. A. ss. 19–21.

Notice of this mortgage should be given to the assurance offices, and to the settlement trustees. Notice to the solicitors of the trustees is not sufficient: *Saffron Waldon, &c., Society v. Rayner*, 14 Ch. D. 406.

Notice to solicitors.

The Policies of Assurance Act, 1867 (30 & 31 Vict. c. 144), gives to the assignee of a policy of life assurance right to sue upon it in his own name (s. 1), provided that a written notice of the date and purport of the assignment shall have been given to the company liable under the policy at their principal place of business (s. 2).

Right of assignee to sue on policy of life assurance.

By the Judicature Act of 1873 (36 & 37 Vict. c. 66), s. 25 (6), an absolute assignment by writing (not purporting to be by way of charge only) of any debt or other legal chose in action of which express notice in writing shall have been given to the debtor, trustee, or other person, from whom the assignor would have been entitled to receive or claim such debt or chose in action, is deemed effectual at law (subject to all equities which would have been entitled to priority over the right of the assignee if that Act had not passed), to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor.

As to debts and choses in action generally.

The last-mentioned section does not apply to an assignment, by way of sub-mortgage, of a mortgage debt and securities: *National Provincial B. of E. v. Harle*, 6 Q. B. D. 626. See, however, this case commented on in *Burlinson v. Hall*, 12 Q. B. D. 347.

Sub-mortgage.

Where the debt or other chose in action is equitable, no power to sue is necessary.

The C. A. s. 27 enables the statutory transferee of the debt and interest secured by a statutory mortgage to sue and give receipts for them, although they are not expressly assigned.

Mortgage debt on statutory transfer.

MORTGAGES.
XIX.
 —
 Notice.

Notice of all assignments or mortgages of choses in action should be given to the debtor or each of the debtors. In all cases it should, and in cases within the protection of the above-mentioned Acts it must, be in writing.

For a PRECEDENT of a FURTHER CHARGE by SUPPLEMENTAL DEED on FREEHOLDS, see C. A. 4th Schedule, Form II.

XX.
 —
 FURTHER
 CHARGE.

FURTHER CHARGE by SUPPLEMENTAL DEED on Life Interest and Policy comprised in last Precedent XIX., and ASSIGNMENT of FURTHER POLICY as security.

Parties.

THIS INDENTURE made the day of between W. H. of &c. [*mortgagor*] of the one part, and A. of &c., B. of &c., C. of &c., and D. of &c., the estate trustees &c., [*the same description as in the last precedent*] [*mortgagees*] of the other part:

Recitals.
 That deed is
 supplemental.

Whereas these presents are supplemental to an indenture of mortgage for securing £ and interest dated &c., and made between the same parties as these presents, and hereinafter called the principal indenture:

That debt and
 interest due.

And whereas the said sum of £ secured by the principal indenture with the current half-year's interest thereon is still due:

Another insurance.

And whereas the said W. H. has effected the further policy of assurance on his life hereinafter mentioned and assigned:

Agreement for
 further
 advance.

And whereas the estate trustees have agreed to advance out of money belonging to them as such trustees to the said W. H. the further sum of £ upon having the repayment thereof with interest as hereinafter mentioned secured, and also upon having the said sum of £ and the interest thereon due under the principal indenture further secured, as hereinafter appearing:

First
 testatum.
 Covenant for
 payment.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £ to the said W. H. paid by the estate trustees

out of money belonging to them as such trustees, the receipt of which sum of £ the said W. H. hereby acknowledges, the said W. H. hereby covenants with the estate trustees [*covenant to pay the further sum on next half-yearly day and interest half-yearly, adapting the covenant for payment in last Precedent*] AND FURTHER that the hereditaments, annual income, policies, and moneys, demised and assigned respectively by the principal indenture shall stand charged with and shall not be redeemed except upon payment of the said sum of £ and the interest thereon hereinbefore covenanted to be paid, as well as the said sum of £ and the interest thereon secured by the principal indenture.

FURTHER
CHARGE.
XX.
—

And further
charge.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said W. H. AS BENEFICIAL OWNER hereby assigns unto the estate trustees

Second
testatum.
Assignment of
new policy.

All that policy for the sum of £ effected in the name and on the life of the said W. H. with the W. Life Assurance Company dated &c., numbered , and at the annual premium of £ , and the said sum of £ and all other money to become payable thereunder, and the full benefit thereof:

TO HAVE AND RECEIVE the same unto the estate trustees Subject to the like right of redemption by the said W. H. as immediately after the execution of these presents and under the principal indenture, and these presents will be subsisting with respect to the said hereditaments, annual income, policies, and moneys demised and assigned respectively by the principal indenture.

Habendum.

AND the said W. H. hereby COVENANTS with the estate trustees that all the covenants and provisions contained in the principal indenture shall apply and have effect with respect to the policy hereby assigned, and also for securing the payment of the principal money and interest hereby covenanted to be paid in the same manner as if the whole principal money secured by the principal indenture and these presents, making together the sum of £ and the interest thereon, had been originally secured by the principal indenture, and as if the said

Covenants in
principal deed
to apply.

**FURTHER
CHARGE.
XX.**
—

Provisions for
reduction of
interest and
term of loan to
apply.

policy hereby assigned had been thereby assigned for securing the payment of the said aggregate sum of £ and the interest thereon, and as if the said aggregate sum and all the said policies had been actually mentioned and included in the covenants and provisions contained in the principal indenture.

AND IT IS HEREBY AGREED that the provision for reduction of the rate of interest from £ per cent. to £ per cent. contained in the principal indenture, and also the provision contained therein restricting the right of calling in or paying off the principal money shall apply to and include the principal money and interest hereby secured in like manner as if the said aggregate principal sum of £ had been originally secured by the principal indenture, and the covenants and provisions of that indenture had applied to the policy hereby assigned in the manner in which the same are so applied by the covenant of the said W. H. hereinbefore contained.

In witness &c.

For AN AGREEMENT in a mortgage varying powers of leasing in C. A. see Precedent XXVII., and for AN AGREEMENT applying the leasing powers of the Act to mortgages previously made see Precedent XXVIII.

SECT. III.

TRANSFERS OF MORTGAGES.

TRANSFERS OF
MORTGAGES.
XXI.

TRANSFER BY SUPPLEMENTAL DEED OF MORTGAGE IN
FEE AND FURTHER CHARGE, adapted to C. A. sch. 4,
Forms I. and II., mortgagor not concurring.

THIS INDENTURE made the day of between Parties.
D. of &c. [*transferor*] of the one part, and E. of &c.
[*transferee*] of the other part, supplemental to an in-
denture of mortgage dated &c., and made between A.
of the one part and B. and C. of the other part, for
securing to the said B. and C. the sum of £ and
interest at per cent. per annum on hereditaments
situated at &c., and supplemental also to an indenture of
further charge dated &c., and made between the same
parties and in the same order for securing to the said
B. and C. the further sum of £ and interest at the
rate aforesaid on the same hereditaments:

Whereas the said B. died on &c. 1882, and the said C. died on &c. 1883, having by his will dated &c., appointed the said D. his executor, who proved the said will in the District Probate Registry at on &c.:

Recitals of the
death of
mortgagees,
and that D.
executor of
survivor.

And whereas the said principal sums of £ and £ are due to the said D. on the hereinbefore mentioned securities with interest thereon from the day of last:

That principal
and current
interest due.

And whereas the said E. has agreed to pay to the said D. the said sums of £ and £ , and also the sum of £ for the interest thereon from the said day of last, making together the total sum of £ upon having such transfer as is hereinafter expressed of the said principal sums of £ and £ and interest, and the securities for the same:

Agreement for
transfer.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the said sum of £ [*the total sum*] upon the execution of these presents paid to the said D. by the said E., the receipt whereof the said D. hereby acknowledges, the

First
testatum.
Assignment of
debts.

TRANSFERS OF
MORTGAGES.
XXI.

said D. AS THE PERSONAL REPRESENTATIVE of the said C. deceased hereby assigns unto the said E.

All those the said principal sums of £ and £ owing on the aforesaid securities, and all interest due and to become due thereon respectively, and the full benefit of and right to exercise and enforce all powers and securities for compelling payment of the said sums and interest,

Habendum.

TO HAVE AND RECEIVE the same unto the said E. absolutely.

Second
testatum.
Conveyance of
hereditaments.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said D. AS SUCH PERSONAL REPRESENTATIVE AS AFORESAID hereby conveys (a) unto the said E.

All the hereditaments comprised in and conveyed by the said indenture of mortgage and now vested in the said D. subject to redemption thereunder and under the said indenture of further charge,

TO HOLD unto and to the use of the said E. in fee simple Subject to such right of redemption as is now subsisting therein under the said indentures of mortgage and further charge. In witness &c.

4

XXII. TRANSFER by SUPPLEMENTAL DEED of a MORTGAGE IN FEE by the executor of the survivor of deceased mortgagees, mortgagor concurring and receiving a further advance.

Parties.

THIS INDENTURE, made the &c., Between X. of &c. [*transferor*], of the first part, A. of &c. [*mortgagor*], of the second part, and M. of &c. [*transferee*], of the third part, and supplemental to an indenture of mortgage, hereinafter called the principal indenture, dated &c., and made between the said A. of the one part and B. and C. of the other part, for securing to the said B. and C. £5000 and

(a) The mortgaged land is vested in the executor of the last surviving mortgagee under C. A. s. 30.

interest advanced by them on a joint account [*Precedent XV., ante*].

TRANSFERS OF
MORTGAGES.
XXII.

Whereas the said B. died on &c. 1882, and the said C. died on &c. 1883, having by his will dated &c., appointed the said X. sole executor thereof, who proved the same on the &c., in the Principal Probate Registry :

Recitals.
Death of the
mortgagees.

And whereas the said sum of £5000 is still due to the said X. as such executor as aforesaid, but all interest thereon has been paid up to the date of these presents as he hereby acknowledges :

Debt still
owing.

And whereas M. has agreed at the request of A. to pay to X. the sum of £5000, and to advance to A. the further sum of £1000 upon having the payment of the aggregate sum of £6000 with interest as hereinafter mentioned, secured in manner hereinafter appearing :

Agreement for
transfer and
further
advance.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £5000 paid by M. to X. as such executor as aforesaid by the direction of A. (the receipt whereof X. hereby acknowledges), X. AS THE PERSONAL REPRESENTATIVE of the said C. deceased, and by the direction of A., hereby assigns (a) unto M. the sum of £5000 secured by the principal indenture, and all interest henceforth to become due thereon, and the benefit of all securities for the same, TO HOLD to M. absolutely :

First
testatum.
Assignment of
original debt.

AND THIS INDENTURE ALSO WITNESSETH that in consideration of the said sum of £5000 paid by the said M. in manner aforesaid, and of the further sum of £1000 paid to A. by M. (the receipt of which sum of £1000 and the payment to X. in manner aforesaid of which sum of £5000 A. hereby acknowledges), A. hereby covenants with M. [*covenant to pay £6000 and interest, Forms No. 4 and 4b.*]

Second
testatum.
Covenant to
pay principal
and interest.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid X. AS SUCH PERSONAL REPRESENTATIVE

Third
testatum.
Conveyance.

(a) The original debt is assigned in order to retain its priority. The mortgagee is bound to assign the debt and transfer the estate by the direction of the mortgagor, C. A. s. 15, but subject to the right of an incumbrancer requiring assignment and transfer: C. A. 1882, s. 12.

TRANSFERS OF
MORTGAGES.
XXII.

TATIVE as aforesaid, by the direction of A. hereby conveys and releases (a), And A. as BENEFICIAL OWNER hereby conveys and confirms unto M.

All the hereditaments comprised in and conveyed by the principal indenture, and now vested in X. subject to redemption thereunder,

To HOLD unto and to the use of M. in fee simple, subject to the proviso for redemption following, [*proviso for redemption, Form No. 6;*

Provision for reduction of interest on the aggregate sum, Form No. 10 or 11;

For continuing loan, Form No. 12;

Authorizing consolidation, Form No. 13;

For restricting mortgagor's power of leasing, Form No. 15,]

In witness &c.

XXIII.

TRANSFER OF A MORTGAGE (LONG TERM).

Parties.

THIS INDENTURE (b) made the day of 188

(a) See note to last Precedent.

(b) This and the next three Precedents are part of the same transaction, and are given as an illustration of how the several charges on an incumbered estate may be consolidated in one mortgagee, a further advance being made.

It is most convenient to take a separate transfer from each incumbrancer. There is then only a short deed for each to approve instead of one long deed going round to all for approval.

In the transfers in this and the next Precedent it will be observed that full recitals of the intermediate transfers are not given. It is sufficient that the original mortgage is recited, and the dates, parties and result of the transfers given. The transferor only transfers what he has under them. So in the principal mortgage (Precedent XXVI., *post*) it is unnecessary to do more than give a list of the incumbrances in the schedule. A glance at the schedule shews at once the state of the title. If all the incumbrances and their transfers are recited according to the old fashion, it takes time to read and ascertain what they are. In reading some old long deed with a mass of accurate and neatly drawn recitals as to the incumbrances on a property like that dealt with by this and the three following Precedents, one is inclined to

Convenience of
putting
incumbrances
in schedule.

between W. E. S. of &c. [*transferor*] of the first part, S. E. F. [*mortgagor*] of the second part, and G. P. C. [*transferee*] of the third part :

TRANSFERS OF
MORTGAGES.
XXIII.

Whereas by an indenture dated the 8th day of April, 1873, and made between &c., after recitals whereby it appeared that under an indenture dated &c. 1825, a term of one thousand years, without impeachment of waste, in the hereditaments in the county of S. thereby settled was vested in the said R. and B. upon trusts for raising the sum of £8000 for R. A. S. deceased, and that the said sum was then payable to her children, parties of the first part to the indenture now in recital, and that the said S. E. F. was entitled to the inheritance of the hereditaments comprised in the said term, and had paid the sum of £2000 in part discharge of the said sum of £8000, leaving a balance of £6000 unpaid in respect thereof, It was witnessed that in consideration of £6000 paid by the said W. E. S. to the parties of the first part to the indenture now in recital in equal shares, they assigned the said sum of £6000 remaining charged on the said settled hereditaments and the interest to become due for the same unto the said W. E. S. : And it was also witnessed that the said R. and B. assigned all the hereditaments comprised in the said indenture dated &c. 1825 unto the said W. E. S. for the residue of the said term of one thousand years by way of mortgage for securing payment to him of the said sum of £6000 and interest thereon at the rate of 4 per cent. per annum :

Recital of
mortgage.

And whereas the said sum of £6000 now remains owing to the said W. E. S. on the aforesaid security, but all interest thereon has been paid as he hereby acknowledges :

Sum due.

wonder that the learned conveyancer should have expended so much time and skill in constructing a labyrinth for the apparent purpose only of making other practitioners expend more time and skill in finding their way into it. The schedule to the principal mortgage in the text (Precedent XXVI., *post*) is much easier to draw and to understand when drawn than the old-fashioned recitals.

TRANSFERS OF
MORTGAGES.
XXIII.

Title to
equity of
redemption.

Agreement for
transfer.

First
testatum.
Assignment of
debt.

Habendum.

Second
testatum.
Assignment of
term by the
direction of
beneficial
owner.
Parcels.

Habendum.

And whereas the said S. E. F. is now absolutely entitled in possession to or has a general power of appointment over the fee simple in possession of the premises comprised in the hereinbefore recited indenture, subject to the security thereby made and to several other incumbrances, And at his request the said G. P. C. has agreed to pay to the said W. E. S. the sum of £6000 upon having such transfer as is hereinafter contained of the said mortgage debt of £6000 and the interest to become due thereon and the securities for the same :

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £6000 paid to the said W. E. S. by the said G. P. C. at the request of the said S. E. F. (the receipt of which sum of £6000 the said W. E. S. hereby acknowledges) the said W. E. S. AS MORTGAGEE hereby assigns unto the said G. P. C.

All that the principal sum of £6000 now owing on the security aforesaid, and the interest to become due for the same, and the full benefit of and the right to exercise and enforce all powers and securities for compelling payment of the said sum and interest,

TO HAVE AND RECEIVE the same unto the said G. P. C. absolutely.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said W. E. S. AS MORTGAGEE, at the request (a) of the said S. E. F., hereby conveys and the said S. E. F. confirms unto the said G. P. C.

All the hereditaments comprised in and assigned by the recited indenture and now vested in the said W. E. S. subject to redemption thereunder,

TO HOLD to the said G. P. C. for the residue of the said term of one thousand years, Subject to the right of re-

(a) It is not requisite in this transfer to imply any covenant on the part of S. E. F. His covenant is contained in the principal mortgage Preced. XXVI.

demption subsisting therein under the recited indenture on payment of the said sum of £6000 and the interest thereon.

TRANSFERS OF
MORTGAGES.
XXIII.

In witness &c.

TRANSFER OF MORTGAGE (LONG TERM).

XXIV.

THIS INDENTURE made the day of 188 , Parties.
between T. F. of &c., and J. B. of &c. [*transferors*] of the
first part, S. E. F. of &c. [*mortgagor*] of the second part,
and G. P. C. of &c. [*transferee*] of the third part :

Whereas by an indenture dated the 5th day of April, Recital of
1825, and made between &c., after recitals whereby it ap- mortgage.
peared that under an indenture of settlement dated &c., the
said R. S. had power to make the appointment and charge
thereinafter contained on the hereditaments thereby
settled, It was witnessed that in consideration of £10,000
paid by the said W. M. for the purpose in the indenture
now in recital mentioned, the said R. S. charged all the
hereditaments comprised in the said settlement with the
payment to the said W. M. of the sum of £10,000 and
interest thereon at 4 per cent. per annum, And by the
indenture now in recital the said R. S. appointed all
the hereditaments comprised in the said settlement to
the said W. M. for the term of five hundred years,
without impeachment of waste, by way of mortgage for
securing payment of the said sum of £10,000 and the
interest thereon :

And whereas under six indentures, the first dated the Intermediate
5th day of April, 1826, and made &c., the second dated transfers.
&c. [*here follow dates and parties to six successive deeds of
transfer*], being successive transfers of mortgage, the said
mortgage debt of £10,000 secured by the said indenture
of the 5th day of April, 1825, and the residue of the said
term of five hundred years forming the security for the
same, became vested in the said T. F. and J. B. :

And whereas the said sum of £10,000 now remains Sum due.
owing as to £5000 part thereof to the said T. F., and as

TRANSFERS OF
MORTGAGES.
XXIV.

Title to equity
of redemption.

to £5000 residue thereof to the said J. B. on the security of the aforesaid indentures of mortgage and transfer of mortgage, but all interest thereon has been paid, as they hereby acknowledge :

And whereas the said S. E. F. is now absolutely entitled in possession to or has a general power of appointment over the fee simple and inheritance of the hereditaments comprised in the said term of five hundred years, subject to the security for the said sum of £10,000 and the interest thereon, and several other incumbrances. [*Here follow agreement for transfer and transfer of the debt and term in the same form as in the last Precedent, except that the transferors assign and convey jointly as in the next Precedent.*]

In witness &c.

XXV.

TRANSFER OF MORTGAGE IN FEE.

Parties.

THIS INDENTURE made the day of 188 , between W. F. of &c. and B. H. of &c. [*transferors*] of the first part, S. E. F. of &c. [*mortgagor*] of the second part, and G. P. C. of &c. [*transferee*] of the third part.

Recital of
mortgage

Whereas by an indenture dated the 12th day of November, 1868, and made between the said S. E. F. of the one part, and R. S. T. and the said W. F. of the other part, in consideration of the sum of £9000 paid to the said S. E. F. by the said R. S. T. and W. F., the manor of C. in the county of S. and divers other lands and hereditaments in the same county, known as the C. Estate, were by the said S. E. F. appointed and assured to the use of the said R. S. T. and W. F. in fee simple, subject to the several incumbrances in the indenture now in recital mentioned and by way of mortgage for securing payment to them of the sum of £9000 and interest thereon on the day therein mentioned and since passed, and it was by the indenture now in recital declared that the said sum of £9000 belonged to the said R. S. T. and W. F. on a joint account :

And whereas the said R. S. T. died in the year 1877:

TRANSFERS OF
MORTGAGES.
XXV.

Transfer.

And whereas by an indenture dated the 3rd day of May, 1878 (indorsed on the last recited indenture), and made between the said W. F. of the first part, the said B. H. of the second part, and the said W. F. and B. H. of the third part, after reciting that the said W. F. and B. H. were then jointly entitled in equity to the said sum of £9000 secured by the recited indenture, and the interest due and to become due thereon, It was witnessed that in consideration of the premises the said W. F. assigned the said principal sum of £9000 and the interest due and to become due thereon unto the said W. F. and B. H. absolutely, And the said W. F. granted all the hereditaments comprised in the recited indenture and then remaining vested in him unto the said B. H. in fee simple to the use of the said W. F. and B. H. in fee simple, subject to the right of redemption then subsisting therein on payment of the said sum of £9000 and the interest thereon;

And whereas the said sum of £9000 now remains owing to the said W. F. and B. H. on the security aforesaid, but all interest for the same has been paid as they hereby acknowledge, And the said G. P. C. has agreed at the request of the said S. E. F. to pay to the said W. F. and B. H. the sum of £9000 upon having such transfer made as hereinafter contained of the said mortgage debt of £9000 and interest to become due thereon and the securities for the same:

Sum due.

Agreement for
transfer.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £9000 paid to the said W. F. and B. H. by the said G. P. C. at the request of the said S. E. F. (the receipt of which sum of £9000 the said W. F. and B. H. hereby acknowledge) the said W. F. and B. H. AS MORTGAGEES hereby assign unto the said G. P. C.

First testatum.
Assignment of
debt.

All that the principal sum of £9000 now owing on the security of the hereinbefore recited indentures and the interest henceforth to become due for the same, and the

TRANSFERS OF
MORTGAGES.
XXV.

Habendum.
Second
testatum.
Conveyance of
the land.

full benefit of and the right to exercise and enforce all powers and securities for compelling payment of the said sum and interest,

To HAVE AND RECEIVE the same unto the said G. P. C. absolutely.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said W. F. and B. H. AS MORTGAGEES and at the request (a) of the said S. E. F. hereby convey and the said S. E. F. hereby confirms unto the said G. P. C.

Parcels.

All the said hereditaments and premises comprised in and conveyed by the recited indentures of &c. 1868 and &c. 1878 and which are now vested in the said W. F. and B. H. subject to redemption under the same indentures,

Habendum.

To HOLD unto and to the use of the said G. P. C. in fee simple Subject to the right of redemption subsisting therein on payment of the said sum of £9000 and the interest thereon. In witness &c.

XXVI.

MORTGAGE IN FEE to secure consolidated debt, including incumbrances transferred by the three last Precedents and further advance.

Parties.

THIS INDENTURE (b) made the day of 188 , between S. E. F. of &c. [*mortgagor*] of the one part, and G. P. C. of &c. [*mortgagee*] of the other part.

Recital of title
of mortgagor
subject to
incumbrances
in second
schedule.

Whereas under an indenture dated &c. made between the said S. E. F. of the one part and W. S. of the other part and duly enrolled as a disentailing assurance, the manor, lands, and hereditaments hereinafter mentioned and intended to be hereby appointed and conveyed now stand limited subject to the several incumbrances mentioned in the second schedule hereto To such uses, upon such trusts,

(a) See note (a) to Preced. XXIII.

(b) This is the principal mortgage referred to in the notes to Preced. XXIII.

and subject to such powers and provisions as the said S. E. F. shall by deed, will, or codicil appoint, and in default of appointment To the use of the said S. E. F. during his life without impeachment of waste with remainders over :

TRANSFERS OF
MORTGAGES.
XXVI

And whereas all the incumbrances representing a principal sum of £65,000 with the securities for the same mentioned in the first part of the said second schedule hereto, have been transferred to and are now vested in the said G. P. C. by the several indentures dated in this present year mentioned in the first part of the same schedule, and the incumbrances mentioned in the second part of the same schedule still remain outstanding in the persons in the said second part mentioned :

Incumbrances
in first part
of second
schedule
transferred to
mortgagee for
£65,000.

And whereas the sum of £65,000 was advanced by the said G. P. C. and applied in obtaining transfers to him of the incumbrances mentioned in the first part of the said second schedule hereto at the request of the said S. E. F. :

£65,000
advanced at
request of
mortgagor.

And whereas all interest on the said sum of £65,000 has been paid to the date hereof, and the said G. P. C. has agreed to advance to the said S. E. F. the further sum of £5000, making, with the said sum of £65,000, the total sum of £70,000 advanced by the said G. P. C. to or on account of the said S. E. F. upon having the repayment of the said sum of £70,000 with interest thereon at the rate hereinafter mentioned secured in manner hereinafter appearing :

Agreement for
further
advance of
£5000 and for
consolidation.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £65,000 so paid as aforesaid by the said G. P. C. for obtaining transfers of the last mentioned incumbrances, and also of the sum of £5000 at or before the execution of these presents paid to the said S. E. F. by the said G. P. C., the payment and receipt in manner aforesaid of which sums of £65,000 and £5000, making together the sum of £70,000 paid by the said G. P. C. to or on account and by the direction of the said S. E. F., the said S. E. F. hereby acknowledges, The said S. E. F. hereby

First testatum.
Covenant to
pay principal
and interest.

MORTGAGES.
XXVI.

Second
testatum.

Appointment
and convey-
ance.

Parcels.

Subject to
incumbrances
in first and
second parts of
the second
schedule,
And to
drainage
charges,
And to
redemption.

covenants with the said G. P. C. [*covenant to pay principal sum of £70,000 and interest, Forms No. 4 and 4b*].

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid and in exercise of the power contained in the recited indenture of &c., and of every other power enabling him, the said S. E. F. as BENEFICIAL OWNER hereby appoints, and by virtue of his estate also conveys and confirms unto the said G. P. C.

ALL THAT the manor of C., in the county of S., and all other the messuages, lands, and hereditaments forming what is known as the C. estate in the same county, which estate is intended to be more particularly described in the first schedule hereto, and is intended to be delineated in the plan hereto annexed and to be thereon coloured , And all other, if any, the lands and hereditaments comprised in the said first schedule hereto, or coloured on the said plan,

To HOLD unto and to the use of the said G. P. C. in fee simple, Subject to the several incumbrances mentioned in the first part of the second schedule hereto now vested in the said G. P. C. as aforesaid, and also to the incumbrances mentioned in the second part of the same schedule, and also Subject to certain drainage rentcharges, not exceeding together in the whole the annual sum of £ granted to the Lands Improvement Company, for terms expiring not later than the year 18 , and gradually decreasing in each year And also Subject to the proviso for redemption hereinafter contained, that is to say [*add proviso for redemption, Form No. 6 ; and covenant to insure buildings against fire, Form, No. 9.*]

In witness, &c.

The FIRST SCHEDULE before referred to.

[*contains a particular of the property.*]

The SECOND SCHEDULE before referred to.

FIRST PART.

List of Mortgages on the C. Estate, which have all been transferred to G. P. C.

—	Principal Sum secured.	Date of Original Mortgage.	Name of Original Mortgagees.	Dates of Transfers.	Whether on Term or Fee.
1	6,000	8th April, 1873	W. E. S.	188 .	Term of 1000 years created by settlement of &c. 1825.
2	10,000	5th April, 1825	W. M.	5th April, 1826. &c. &c. 188 .	Term of 500 years created by mortgage deed.
3	9,000	12th November, 1868.	R. S. T. and W. F.	3rd May, 1878. 188 .	Fee.

[Here follow six several other incumbrances making up £65,000.]

Total £65,000.

SECOND PART.

Incumbrances not transferred to G. P. C.

10	£14,000 bearing interest at 4 per cent.	18th August, 1873.	F. H. W.	..	Term of 5000 years.
11	Annuity of £700.	22nd July, 1844.	Payable to A. F.	..	Usual powers of distress.

See note to Precedent of mortgage of freeholds, No. XV., *ante*.

FOR TRANSFERS OF MORTGAGES in contemplation of marriage, and on the appointment of new trustees, and the retirement and discharge of old trustees, see Precedents XXXV., XXXVIII., XXXIX., XLIII., and XLIV.

MORTGAGES.
XXVII.

**VARYING
LEASING
POWERS.**

Building
leases for
999 years.

Streets,
gardens,
squares, &c.,
may be
authorised.

Mining leases.

**AGREEMENT under C. A., s. 18, subs. 14, IN A MORTGAGE
VARYING POWER OF LEASING (a).**

AND IT IS HEREBY AGREED that the powers of leasing conferred on mortgagor and mortgagee by the Conveyancing and Law of Property Act, 1881, shall be varied and extended in the following particulars:—

1. A building lease, or building leases, may be granted for any term not exceeding nine hundred and ninety-nine years.
2. Every building lease may authorise any part of the premises to be laid out for streets, roads, paths, squares, gardens, and other open spaces, sewers, drains, and watercourses, either to be dedicated to the public or not, with fences, pavings, connexions and other works incidental thereto respectively.
3. A lease or leases may be granted for mining purposes, as follows, (that is to say,)

**XXVIII. AGREEMENT under C. A., s. 18, subs. 16, APPLYING
LEASING POWERS of the Act to mortgages pre-
viously made.**

**APPLYING
LEASING
POWERS.**

THIS INDENTURE, made the day of , 18 , between [*mortgagor*] of &c., of the one part, and the several persons whose hands and seals are hereunto affixed in the third column of the schedule hereto, being incumbrancers on the estates of the said [*mortgagor*], situated at , in the county of , under the several indentures the dates whereof and the parties whereto are specified in the first and second columns of the same schedule of the other part:

WITNESSETH that it is hereby agreed between the parties hereto as follows, that is to say:—

1. The several persons parties hereto shall, in reference

(a) For an agreement excluding mortgagor's powers of leasing except with the mortgagee's consent, see Form No. 15, p. 225.

to the hereditaments comprised in the indentures mentioned in the schedule hereto have all the same powers of leasing as if the said several indentures had been dated and executed after the commencement of the Conveyancing and Law of Property Act, 1881, but so that such powers shall be varied in the following particulars :

MORTGAGES.
XXVIII.

2. [*Here add variation clauses as in last precedent, or otherwise as required.*]

In witness &c.

THE SCHEDULE before referred to [*to contain the dates of and parties to incumbrances in the first and second columns respectively, and the signatures and seals of incumbrancers in the third column.*]

SECT. IV.

RE-CONVEY-
ANCE.
XXIX.

Parties.

RE-CONVEYANCE BY SUPPLEMENTAL DEED OF FREEHOLDS, LEASEHOLDS, and COPYHOLDS by the administrator of the survivor of deceased mortgagees.

THIS INDENTURE made the &c., between X. of &c. [*administrator of last surviving mortgagee*] of the one part, and A. of &c. [*mortgagor*] of the other part, supplemental to an indenture of mortgage hereinafter called the principal indenture, dated the &c., and made between the said A. of the one part and B. and C. of the other part for securing on hereditaments situated at &c. the payment by the said A. to the said B. and C. of £ and interest [*Preced. XVIII.*]:

Recitals.

Deaths of the mortgagees and intestacy of survivor.
Letters of administration.

No surrender of copyholds.

Whereas the said B. died on &c., 1882, and the said C. died on &c., 1883, intestate, and letters of administration to his personal estate were granted to the said X. by the Principal Probate Registry on &c.

And whereas no surrender has been made of the copyhold hereditaments comprised in the principal indenture pursuant to the covenant for that purpose therein contained:

Agreement for reconveyance.

And whereas the said sum of £ now remains due on the security of the principal indenture but all interest thereon has been paid as is hereby acknowledged, And it has been agreed that on payment of the said sum such re-conveyance shall be executed as hereinafter contained:

Testatum.
Conveyance of freeholds and leaseholds.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of all money secured by the principal indenture having been paid by A. to X., the receipt whereof X. hereby acknowledges, X. AS THE PERSONAL REPRESENTATIVE of the said C. deceased hereby conveys, surrenders, and releases unto A.

All the freehold and leasehold lands and hereditaments comprised in or which now are by any means vested in X. subject to redemption under the principal indenture,

TO HOLD the said freehold premises unto and to the use of A. in fee simple,

RE-CONVEY-
ANCE.
XXIX.
—

AND AS TO the said leasehold premises to the intent that the residue of the term therein granted by the principal indenture may merge and be extinguished, And that the trust declared by the principal indenture may cease, AND AS TO all the premises discharged from all money secured by and from all claims under the principal indenture.

AND for the consideration aforesaid, X., AS SUCH PERSONAL REPRESENTATIVE as aforesaid, hereby releases unto A. all the said copyhold hereditaments covenanted to be surrendered by the principal indenture to the intent that the same may be discharged from the said covenant and the trust thereof created by the principal indenture and from all money secured by and from all claims under the principal indenture.

Release of
copyholds.

In witness &c.

The mortgage estates devolve on the personal representative of the last surviving mortgagee, as to the freeholds and the equitable interest in the copyholds under C. A., s. 30, and as to the leaseholds under the Common Law.

Devolution of
mortgage
estates.

Where the mortgage is only equitable, as under an agreement to make a mortgage, or a mortgage of the equity of redemption, no re-conveyance is necessary. It is sufficient if a receipt for the mortgage debt and interest is endorsed and witnessed, and the security delivered back to the mortgagor.

No re-convey-
ance of
equitable
mortgage
necessary.

SETTLEMENTS.

XXX.

SECT. V.

SETTLEMENTS.

CONVEYANCE
UPON TRUST
FOR SALE.

CONVEYANCE OF FREEHOLDS AND COVENANT TO SURRENDER COPYHOLDS BY HUSBAND, upon trust for sale, in contemplation of his marriage.

Parties.

THIS INDENTURE made &c., between A. B. of &c., [*husband*] of the first part, C. D. of &c., spinster [*wife*], of the second part, and W. of &c., X. of &c., M. of &c., and N. of &c. (which four last named persons are hereinafter called the trustees), of the third part

First
testatum.
Conveyance of
freeholds.

WITNESSETH that in pursuance of an agreement made on the treaty for the marriage which has been agreed upon and is intended to be solemnized between the said A. B. and C. D., and in consideration thereof, the said A. B. AS SETTLOR, with the approbation of the said C. D., hereby conveys unto the trustees

All that &c.

Habendum.

To HOLD unto the trustees in fee simple

To the use of the said A. B. in fee simple until the said intended marriage shall be solemnized, And after the solemnization thereof To the use of the trustees their heirs and assigns (a), Upon the trusts hereinafter declared :

Second
testatum.
Covenant to
surrender
copyholds.

AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and for the consideration aforesaid, the said A. B. AS SETTLOR, with the approbation of the said C. D., hereby covenants with the trustees That he and all other necessary parties will forthwith after the solemnization of the said intended marriage, at the cost of the trust estate surrender into the hands of the lord or lady of the manor of &c. according to the custom thereof,

All that &c. (to which hereditaments the said A. B.

(a) The words "heirs and assigns" are used here to enable the executors or administrators of the last surviving trustee to execute the trusts and powers under C. A., s. 30, see note (a) to Form No. 16, p. 226.

was admitted tenant at a Court held of the said manor SETTLEMENTS.
on the &c.) **XXX.**

To THE USE of the trustees their heirs and assigns (a) Habendum.
at the accustomed rents, suits, and services :

AND IT IS HEREBY AGREED that the trustees their heirs Trusts of
freeholds and
copyholds.
and assigns shall after the solemnization of the said in-
tended marriage stand seised of the freehold and copy-
hold hereditaments hereby conveyed and covenanted to
be surrendered Upon trust to sell the same or any part
or parts thereof respectively, but during the joint lives
[*continue as in Form No. 16;*

Power of leasing for twenty-one years, Form No. 38;

*Power for husband and wife and the survivor to appoint
new trustees, Form No. 46.]*

In witness &c.

The provisions of the C. A. incorporated in this precedent are general Statutory
provisions
incorporated.
words and the all estate clause (ss. 6, 63), powers of sale (ss. 35, 38),
power to adopt statutory conditions (ss. 3, 66) (see also V. & P. A.
ss. 2, 3), to give receipts (C. A. s. 36), and to appoint new trustees
(s. 31), and covenant, s. 7 (1) E. by the intended husband as settlor.

ANTE-NUPTIAL SETTLEMENT by HUSBAND of the PRO- **XXXA.**
CEEDS of SALE of hereditaments settled on trust for
sale by the last precedent, and by WIFE of INVEST-
MENTS transferred; Upon trusts for husband and
wife successively for life, his interest in wife's trust
fund determining on alienation; trusts for issue of
marriage as husband and wife or the survivor ap-
point; in default, for children of the marriage;
agreement to settle other property of wife and other
provisions.

THIS INDENTURE made &c. [*same date and parties,* Parties.
and in the same order as last preced.]

Whereas a marriage has been agreed upon, and is Recitals.
intended to be solemnized between the said A. B: and Agreement for
marriage.
C. D. :

(a) See note (a), last page.

SETTLEMENTS.
XXXA.

Conveyance
and covenant
to surrender of
even date.

And whereas by an indenture bearing even date with, but executed before these presents and made between the same parties and in the same order as these presents, the said A. B. conveyed the freehold hereditaments therein mentioned to the use of the trustees, their heirs and assigns, after the solemnization of the said intended marriage Upon the trusts thereafter declared; And by the indenture now in recital the said A. B. covenanted with the trustees That he and all other necessary parties would forthwith, after the solemnization of the said marriage, surrender into the hands of the lord or lady of the manor of &c. according to the custom thereof, the copyhold hereditaments therein mentioned To the use of the trustees their heirs and assigns at the accustomed rents, suits, and services: And it was thereby agreed that the trustees should after the solemnization of the said marriage stand seised of the freehold and copyhold hereditaments thereby conveyed and covenanted to be surrendered Upon trust to sell the same as therein mentioned, and to stand possessed of the net money to arise from any such sale (after payment thereof of all costs incidental thereto) and also of the rents and profits of the said premises until sale, Upon the trusts and subject to the powers and provisions declared concerning the same by an indenture therein referred to meaning these presents:

Transfer by
wife of invest-
ments.

And whereas with a view to the settlement intended to be hereby made the said C. D. with the approbation of the said A. B. has transferred into the joint names of the trustees the investments mentioned in the schedule hereto, representing the sum of £ sterling (a):

Agreement for
settlement.

And whereas upon the treaty for the said intended marriage it was agreed that such settlement should be executed as hereinafter contained.

First testatum.
Declaration of
trusts of
investments
until marriage
for wife.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the said

When mar-
riage not
solemnized.

(a) If the marriage is not solemnized the investments will be ordered to be re-transferred: *Essery v. Cowlard*, 26 Ch. D. 191.

intended marriage the said C. D., with the privity of the said A. B., hereby directs and the trustees hereby declare and do agree with the other parties hereto that the trustees shall stand possessed of the investments mentioned in the schedule hereto, and so transferred into their joint names as aforesaid, Upon trust for the said C. D. until the said intended marriage, And after the solemnization thereof Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same.

SETTLEMENTS.
XXXA.

AND IT IS HEREBY AGREED that the trustees shall after the solemnization of the said intended marriage stand possessed of the investments mentioned in the schedule hereto, And also of the net money to arise from any sale made pursuant to the recited indenture of even date herewith as and when the same shall be received, Upon trust that the trustees or the survivors or survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the time being of these presents, hereinafter called the trustees or trustee, SHALL either retain the investments mentioned in the schedule hereto, OR SHALL with the consent of the said A. B. and C. D. during their joint lives, or of the survivor of them during his or her life, and after the death of both at the discretion of the trustees or trustee, sell, call in, or convert into money all or any of the said investments, AND SHALL with the like consent or at the like discretion invest the money arising thereby, and also the net money to arise from any sale made pursuant to the recited indenture as and when the same shall be received, in the names or name of the trustees or trustee in manner following, and not otherwise (a), that is to say:—

Trusts as to
all property
after marriage

To invest and
vary invest-
ments.

In [*investment clause, Form No. 18*]:

AND IT IS HEREBY AGREED that the trustees or trustee shall stand possessed of the investments mentioned in the schedule hereto, and of the varied investments for

Trusts of
investments.

(a) For the object of these words see note to Form No. 17.

SETTLEMENTS.

XXXA.

the time being representing the same, all of which are hereinafter referred to as the wife's trust fund, And shall also stand possessed of the net money to arise from any sale made pursuant to the recited indenture, and of the investments for the time being representing such net money, which net money and the investments representing the same are hereinafter referred to as the husband's trust fund, And also of the annual income of the husband's trust fund and the wife's trust fund respectively, Upon the trusts and subject to the powers and provisions following, that is to say :—

Income of husband's trust fund to him for life, then to wife for life.

AS TO THE HUSBAND'S TRUST FUND, Upon trust to pay the annual income thereof to the said A. B. during his life, and after his death to pay the same annual income to the said C. D. during the residue of her life, if she should survive him, without power of anticipation during any coverture (a) :

Income of wife's trust fund for husband until death or alienation.

AND AS TO THE WIFE'S TRUST FUND, Upon trust if on the solemnization of the said intended marriage the said A. B. should not be an undischarged bankrupt, or should not have executed, done, or suffered any act, deed, or thing, or if no event should have happened, whereby the trust hereinafter declared would if subsisting be determined, Then to pay the annual income of the wife's trust fund to the said A. B. during his life or until [*continue the first trust for husband's inalienable use, Form No. 22a*] :

And then for wife for life.

And if the same trust should fail or determine in his lifetime, then, Upon trust to pay the annual income of the wife's trust fund to the said C. D., if living, for the residue of her life without power of anticipation during any coverture :

And after the failure or determination in the lifetime of the said A. B. of the aforesaid trust in his favour, and the death of the said C. D., which shall last happen, Then Upon trust during the residue of the life of the said A. B.

(a) No trust for the separate use is required : see M. W. P. A. s. 1 ; but the restraint against anticipation is still applicable : see s. 19.

to apply the annual income of the wife's trust fund for the maintenance [*continue trust during the residue of the life of husband, Form No. 22b saying wife's trust fund throughout.*]

SETTLEMENTS.
XXXXA.

AND IT IS HEREBY AGREED that after the death of the survivor of the said A. B. and C. D. the capital and income of the husband's trust fund, and also of the wife's trust fund, shall be held IN TRUST &c.

After death of survivor for issue.

[*Add trusts for issue as parents or survivor shall appoint, in default for children equally, and hotchpot clause, Form No. 24; without the exception of any son;*

Advancement clause, Form No. 26.

Ultimate trusts as to husband's trust fund for him, and as to wife's trust fund for her or her next of kin, so as to exclude the husband, Forms No. 28-30.

Application of rents of real estate until sale, Form No. 31.

Power to wife to make settlement on future marriage, Form No. 33, if required.

Agreement to settle other property of wife, Form No. 35.

Power to trustees to value and apportion mixed funds, Form No. 43, and to employ agents, Form No. 45.

Professional trustee to be paid his costs, Form No. 45a, if required.

Power to husband and wife and survivor to appoint new trustees, Form No. 46.]

In witness &c.

THE SCHEDULE ABOVE REFERRED TO.

[*Investments transferred by the wife.*]

For any further special provisions see next precedent, *post*, and general forms in settlements, *ante*.

The provisions of the C. A. incorporated in this precedent are powers for maintenance and education of infants and accumulation of surplus income (s. 43); power to give receipts (s. 36); to compound and compromise (s. 37), and to appoint new trustees (s. 31). The ordinary trustees' indemnity and reimbursement clauses are supplied by 22 & 23 Vict. c. 35, s. 31.

What statutory provisions incorporated.

SETTLEMENTS. **XXXI.** **ANTE-NUPTIAL SETTLEMENT** by HUSBAND of investments transferred by him, and by WIFE of her shares under a settlement and will expectant on her father's death; upon trust as to husband's trust fund for husband and wife successively for life, and as to wife's trust fund for wife and husband successively for life, his interest in wife's trust fund determining on alienation; trusts for issue of marriage as husband and wife or the survivor shall appoint; in default, for children of the marriage; power to wife to make a settlement on future marriage; agreement to settle other property of wife; covenant by the wife's father to pay an annuity for so much of his life as the wife or any issue of the marriage shall live; powers to invest in the purchase of land generally; also in the purchase of a residence, and other provisions.

Parties.

THIS INDENTURE, made &c., between A. D. of &c., [*husband*] of the first part B. E., spinster [*wife*], a daughter of John E. of &c., of the second part, the said John E. of the third part and W. of &c., X. of &c., Y. of &c., and Z. of &c. (which four last-named persons are hereinafter called the trustees) of the fourth part.

Recitals.
Agreement for marriage.

Whereas a marriage has been agreed upon, and is intended to be solemnised between the said A. D. and B. E. :

Transfer by husband of investments.

And whereas with a view to the settlement intended to be hereby made the said A. D. has caused to be transferred into the joint names of the trustees the investments mentioned in the first schedule hereto, representing the sum of £ sterling :

Title of wife to a third share of investments on death of her father.

And whereas under an indenture dated &c., and made between &c., being a settlement made before and in consideration of the marriage then intended and afterwards solemnised between the said John E. and Mary E. since deceased, and a deed-poll under the hand and seal of the said John E., being a deed of appointment executed under a power contained in the said indenture, the said

B. E. as one of the three children of the said John E. by the said Mary E. is now entitled expectant on the death of her father the said John E., and in the meantime subject to his life interest under the said indenture, and provided the now intended marriage shall be solemnised within six calendar months from the date of the said deed-poll, to one-third share of the investments mentioned in the first part of the second schedule hereto, being the investments now held on the trusts of the said indenture of settlement, or of the investments for the time being representing the said investments so now held, which investments so now held are now standing in the joint names of &c., the present trustees of the said indenture :

SETTLEMENTS.
XXXI.

And whereas under the will dated &c., and proved in the District Probate Registry on &c. of late of &c., who died on &c., the said B. E., as one of the three children of the said John E., is entitled expectant on the death of her father the said John E., and in the meantime subject to his life interest, to one-third share of the proceeds of the sale of the lands and hereditaments and of the income until sale of the lands and hereditaments by the said will devised on trust for sale and now remaining unsold, and of the investments representing the other real estate, and the residuary personal estate of the said testator now held on the trusts of the said will, and the particulars of which lands, hereditaments, and investments are specified in the second part of the second schedule hereto, and are now vested in or standing in the joint names of &c., the trustees and sole acting executors of the said will :

Title of wife to a third share in proceeds of land and investments on death of her father.

And whereas upon the treaty for the said intended marriage it was agreed that such settlement should be executed as hereinafter contained.

Agreement for settlement.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the said intended marriage the said A. D., with the privity of the said B. E., hereby directs and the trustees hereby declare and do agree with the other parties hereto that

First testatum. Declaration of trusts until marriage for husband.

SETTLEMENTS.

XXXI.

Second
testatum.
Assignment
of wife's
property.

the trustees shall stand possessed of the investments mentioned in the first schedule hereto, and so transferred into their joint names as aforesaid, Upon trust for the said A. D. until the said intended marriage, and after the solemnisation thereof Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same.

AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and in consideration of the said intended marriage the said B. E. AS SETTLOR, with the approbation of the said A. D. hereby assigns (a) unto the trustees

First, All that the one third share to which the said B. E. is now or will on the solemnisation of the said intended marriage become entitled in expectancy as aforesaid of the investments mentioned in the first part of the second schedule hereto :

Secondly, All that the one third share to which the said B. E. is now entitled in expectancy as aforesaid in the proceeds of the sale of the lands and hereditaments and of the investments respectively mentioned in the second part of the said second schedule hereto :

And all other (if any) the share or shares of the said B. E. in the investments or in the lands and hereditaments or in the proceeds of the sale of the lands and hereditaments mentioned in the said second schedule :

Habendum.

In trust for
wife until the
marriage.

TO HAVE AND RECEIVE the same unto the trustees absolutely, Upon trust for the said B. E. until the said intended marriage, and after the solemnisation thereof Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same :

Trusts as to all
property after
marriage.

That is to say, IT IS HEREBY AGREED that the trustees shall after the solemnisation of the said intended marriage stand possessed of the investments mentioned in the first schedule hereto, and also of the said shares

(a) As a husband married after 1882 takes no interest in his wife's property, his concurrence for the purpose of assigning is valueless.

and premises hereinbefore assigned, as and when the same fall into possession, Upon trust that the trustees, or the survivors or survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the time being of these presents, hereinafter called the trustees or trustee, shall get in and receive or obtain transfer of the said shares and premises hereinbefore assigned, AND SHALL either permit the investments mentioned in the first schedule hereto, and also so much of the said shares and premises hereby assigned as shall not be received in money, to remain on the securities or investments in which the same now are or shall be received ; OR SHALL, with the consent of the said A. D. and B. E. during their joint lives or of the survivor of them during his or her life, and after the death of both at the discretion of the trustees or trustee, sell, call in, or convert into money all or any of the said investments mentioned in the first schedule hereto, And also so much of the said shares and premises hereby assigned as shall not be received in money, AND SHALL with the like consent or at the like discretion invest the money arising thereby, and also any money received in respect of the said shares and premises hereby assigned, in the names or name of the, trustees or trustee in manner following, and not otherwise (a), that is to say :—

SETTLEMENTS.
XXXI.

To invest and
vary invest-
ments.

In [*investment clause, Form No. 18*] :

AND IT IS HEREBY AGREED that the trustees or trustee shall stand possessed of the investments mentioned in the first schedule hereto, and of the varied investments for the time being representing the same, all of which are hereinafter referred to as the husband's trust fund, And shall also stand possessed of the said shares and premises hereby assigned, and of the investments for the time being representing the same, which shares and premises hereby assigned and the investments representing the same are hereinafter referred to as the wife's trust fund, And also of the annual income of the husband's trust

Trusts of
investments.

(a) See note to Form No. 17.

SETTLEMENTS.
XXXI.

Income of husband's trust fund to him for life, then to wife for life.

Income of wife's trust fund to her for life, then for husband.

After death of survivor for issue.

Ultimate trusts.

Covenant by wife's father to pay annuity.

fund and the wife's trust fund respectively, Upon the trusts and subject to the powers and provisions following, that is to say:—

AS TO THE HUSBAND'S TRUST FUND, Upon trust to pay the annual income thereof to the said A. D. during his life, and after his death to pay the same annual income to the said B. E. during the residue of her life, if she should survive him, without power of anticipation during any coverture (a):

AND AS TO THE WIFE'S TRUST FUND, Upon trust to pay the annual income thereof to the said B. E. during her life, without power of anticipation during any coverture (a), And after her death [*Trusts for the inalienable benefit of husband, Form No. 22a.*]

AND IT IS HEREBY AGREED that after the death of the survivor of the said A. D. and B. E. the capital and income of the husband's trust fund, and also of the wife's trust fund, shall be held

[*Add trusts for issue as parents or survivor shall appoint, in default for children equally, and hotchpot clause, Form No. 24; and also Form No. 25, if required.*

Advancement clause, Form No. 26.

Ultimate trusts as to husband's trust fund for him, and as to wife's trust fund in trust for her or her next of kin, so as to exclude the husband, Forms No. 28-30.

Power for wife to make a settlement on future marriage, Form No. 33.]

AND THIS INDENTURE ALSO WITNESSETH that in consideration of the said intended marriage the said John E. hereby covenants with the trustees hereinbefore named, and also as a separate covenant with the said B. E., That if the said intended marriage shall be solemnised the said John E. will during so much of his life as the said B. E. or any of her issue by the said A. D. shall be living, pay to the trustees or trustee the annual sum of £ , such annual sum to commence from the day of the solemnisation of the said intended marriage, and to

(a) See note, p. 314.

be deemed to accrue due from day to day, but to be paid by equal half-yearly payments, the first payment to be made at the expiration of six calendar months from the solemnisation of the said intended marriage :

SETTLEMENTS.
XXXI.

AND IT IS HEREBY AGREED that the trustees or trustee shall pay and apply the said annual sum of £ to the persons and in the manner to whom and in which the annual income of the wife's trust fund would be payable or applicable in case the same had fallen into possession [*Where Form No. 33 is used add*] Except that no part of the said annual sum of £ shall be paid or applied to or for the benefit of any future husband of the said B. E. or her issue by any future marriage.

[*Agreement to settle other property of wife, Form No. 35.*

Power to invest in the purchase of Land, Form No. 36.

Power to invest in the purchase of residence, Form No. 37.

Power to lease, Form No. 38 (applicable to Nos. 35, 36, and 37).

Power to concur in partition of hereditaments in the 2nd Schedule, Form No. 39.]

PROVIDED ALSO, and it is hereby agreed, that the trustees or trustee of these presents may permit the trustees or trustee for the time being of the will of the said to retain any investments mentioned in the second part of the second schedule hereto, and now held on the trusts of that will, although not being investments authorised by the terms of that will, and the trustees and trustee of these presents shall not, unless they or he in their or his absolute discretion think proper, be bound to take any proceedings as to any such investments which are not so authorised, or as to any other investments for the time being held on the trusts of that will, nor be liable in any way for any loss which may occur through investments, proper or otherwise, being retained or made by the trustees or trustee for the time being of that will, or through any act, deed, or omission on the part of such trustees or trustee.

Power to permit trustees of recited will to retain investments.

[*Add, if required, powers to trustees to deposit money in*

SETTLEMENTS.
XXXI.

bank, Form No. 40; to make contributory loans, Form No. 41; to make loans for a term, Form No. 42.

Power to trustees to value and apportion mixed funds, Form No. 43, and to employ Agents, Form No. 45.

Power to trustees to deposit securities to bearer for safe custody (if any authorised), Form No. 44.

Professional trustee to be paid his costs, Form No. 45a.

Power to husband and wife and survivor to appoint new trustees, Form No. 46.]

In witness &c.

The FIRST SCHEDULE above referred to.

Investments transferred by the husband.

The SECOND SCHEDULE above referred to.

Part 1.

Investments subject to the settlement dated &c.

Part 2.

Land and investments subject to the will of &c.

Notice of this settlement should be given to the trustees of the recited settlement and will.

What statutory provisions incorporated.

The statutory provisions incorporated in this Precedent are those referred to in the note to the last Precedent, and also manner of sale (C. A. s. 35): power to adopt statutory conditions (C. A. ss. 3, 66), (see also V. & P. A. ss. 2 & 3); and covenant E. of C. A. s. 7 (1) by the intended wife as settlor.

PURCHASE
DEED.
XXXII.

CONVEYANCE
OF RESIDENCE
PURCHASED
BY TRUSTEES.

CONVEYANCE OF A RESIDENCE PURCHASED OUT OF SETTLED MONEY by the Trustees of the Settlement Preced. XXXI. (a).

THIS INDENTURE made &c. between H. C. of &c. [*mortgagee*] of the first part, J. C. of &c. [*vendor*] of the

(a) In this precedent the settlement is not recited or made part of the title. It is merely referred to in declaring the trusts of the moneys to arise from the sale of the property under the trust for sale.

second part, A. D. of &c., and B. D. his wife of the third part, and W. of &c., X. of &c., Y. of &c., and Z. of &c. of the fourth part.

SETTLEMENTS.

XXXII.

Whereas by an indenture of mortgage dated &c., and expressed to be made between the said J. C. of the one part and the said H. C. of the other part, the said J. C. granted the messuage and hereditaments hereinafter described and hereby intended to be conveyed unto and to the use of the said H. C. in fee simple, by way of mortgage for securing payment to the said H. C. by the said J. C. of the sum of £4000 with interest thereon as therein mentioned :

Recitals.
Mortgage.

And whereas the parties hereto of the fourth part have at the request of the said A. D., and B. D., testified by their execution of these presents, agreed to purchase from the said J. C. the said hereditaments and the fee simple thereof in possession, free from incumbrances, at the price of £20,000 :

Agreement to
purchase from
mortgagor.

And whereas the principal sum of £4000 is still due to the said H. C. upon the hereinbefore recited security, but all interest thereon has been paid, as he hereby acknowledges, and he has agreed upon receiving the said sum to join in these presents as hereinafter appearing :

Agreement for
concurrence of
mortgagee.

And whereas, it is desired by the parties hereto of the third and fourth parts that the said hereditaments should be conveyed in manner and upon the trusts hereinafter expressed.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the sum of £20,000 upon the execution of these presents paid by the said W., X., Y., and Z., as to £4000 part thereof to the said H. C., at the request of the said J. C., testified by his execution hereof (the receipt of which sum of £4000 the said H. C. hereby acknowledges), And as to £16,000 residue thereof to the said J. C. (the receipt of which sum of £16,000, and the payment in manner aforesaid of which sum of £4000, making together the said purchase-money of £20,000, the said J. C. hereby acknowledges), the said H. C. AS MORTGAGEE, and according to his estate,

Testatum.
Conveyance.

SETTLEMENTS.
XXXII.

by the direction of the said J. C., hereby conveys and releases, And the said J. C. AS BENEFICIAL OWNER hereby conveys and confirms unto the said W., X., Y. and Z.

All that messuage &c.

Habendum.

To HOLD unto and to the use of the said W., X., Y., and Z., their heirs and assigns (a), discharged from all moneys secured by and all claims and demands under the said indenture of mortgage,

Trust for sale.

UPON TRUST to sell the same or any part thereof with the consent in writing of the said A. D. and B. D., during their joint lives, and of the survivor of them during his or her life, and after the death of both at the discretion of the trustees or trustee for the time being of these presents :

Trusts of
proceeds of
sale.

AND IT IS HEREBY AGREED that the said trustees or trustee shall stand possessed of the net money to arise from any such sale (after payment thereof of all costs incidental thereto) Upon the trusts and subject to the powers and provisions which under an indenture dated &c., and made between &c., being a settlement made on the marriage then intended and afterwards solemnised between the said A. D. and B. D. [*Preced. XXXI. ante*], are declared and now subsisting with respect to money forming part of the husband's trust fund (b) thereby settled.

[*Power of leasing for twenty-one years, Form No. 38, saying "the said messuage," &c., instead of "any messuages," &c. ;*

Power for A. D. and B. D. and the survivor to appoint new trustees, Form No. 46.]

In witness &c.

(a) See note (a) to *Preced. XXX*.

(b) The purchase is, in this and the precedent appointing a new trustee, No. XXXVII., *post*, assumed to have been made wholly out of the husband's trust fund.

ANTE-NUPTIAL SETTLEMENT under the **INFANT'S SETTLEMENT ACT** of the wife's portion raisable under the trusts of a term, and her share of a testator's residuary estate, being administered by the Court; upon trusts for the wife and husband successively for life, and then for the issue of the marriage as husband and wife or the survivor shall appoint; in default for children of the marriage, except an eldest son and any other son who before he attains twenty-one succeeds to a title, unless he shall be the only child: Power to raise money for wife's outfit, and to pay costs of settlement, and of administration action.

SETTLEMENTS.
XXXIII.
—
INFANT'S
SETTLEMENT.

THIS INDENTURE made the &c., between the Right Parties Honourable A., Lord B. [*husband*], of the first part, C. D., of &c. spinster, eldest daughter of the late E. D. deceased, and now an infant of the age of twenty years or thereabouts [*wife*], of the second part, and R. of &c., &c. [*four trustees*], which four last-named persons are hereinafter called the trustees, of the third part.

Whereas a marriage has been agreed upon and is intended to be solemnized between the said Lord B. and C. D., with the consent of &c., her testamentary guardians appointed by the will of her father, the said E. D. :

Recitals.
Agreement for
marriage.

And whereas under the will dated &c., and proved on &c., in the Probate Registry, of the said E. D., who died on &c., and of which will M. and N. are now the sole surviving trustees and executors, the said C. D., as one of the two surviving children of the said E. D. other than the eldest son, will upon her marriage or upon her attaining the age of twenty-one years, which shall first happen, become absolutely entitled to one moiety of a sum of £ raisable under the trusts of a term of five hundred years in the testator's freehold and copyhold estates situated at &c., by his said will limited to the said M. and N. upon trust for raising that sum for portions for the testator's children other than a son or daughter entitled as tenant for life to the said

Of wife's title
under a will to
a portion.

SETTLEMENTS.
XXXIII.INFANT'S
SETTLEMENT.

And to a share
in the
testator's
residuary
estate.

Action for the
administration
of the estate of
the testator.

Decree, and
service thereof
on wife.

Chief clerk's
certificate.

Order under
Infants'
Settlement
Act.

estates, And also to one moiety of the net residue remain-
ing after paying debts and legacies and certain other
sums (including the said sum of £) of the money
to arise from the sale and conversion of the freehold, copy-
hold, and leasehold estates of the said testator situated
at &c., and of the testator's residuary personal estate,
and which freehold, copyhold, leasehold, and personal
estate were by the testator's will devised and bequeathed
to the said M. and N. and to G., now deceased, upon trust
for sale and conversion :

And whereas in the year 1880 an action *Re D., D. v. M.*, 1880 D. No. , was instituted in the Chancery
Division of the High Court of Justice for the administra-
tion of the testator's real and personal estate, in which
action L. D., the eldest son of the said testator and an
infant, by &c., his next friend, was plaintiff, and the said
M. and N. were defendants :

AND WHEREAS a decree was made in the said action on
the &c., and the said C. D. has been served with notice
of the said decree, and has become bound by the pro-
ceedings in the said action :

AND WHEREAS the chief clerk has made his certificate
in the said action, dated the &c., and filed on &c., in which
certificate and the schedules thereto the particulars of the
said testator's real estate and the liabilities affecting the
same are set forth, and by which certificate it appears
that the whole of the testator's personal estate has been
applied in discharge of liabilities affecting the same :

And whereas by an order of the Chancery Division of
the High Court of Justice made in chambers (a) on the
day of , in the said action *Re D., D. v. M.*,
and in the matter of an Act of the 18th & 19th Vict. c. 43,
intituled "An Act to enable Infants, with the Approba-
tion of the Court of Chancery, to make binding Settle-
ments of their Real and Personal Estate on Marriage,"
Upon the application of the said C. D. by &c., her next
friend, and of the said [the guardians], the Judge

(a) See R. S. C., 1883, Order LV., r. 2 (10).

being of opinion that the proposed marriage of the said infant C. D. with the said Lord B. was a fit and proper marriage for the said infant, and that the settlement proposed to be effected by an indenture of even date herewith and by this indenture was a proper settlement to be made in contemplation of such marriage, and that the indentures therein referred to, being the said indenture of even date herewith and this indenture, were proper indentures for giving effect to such settlement, the said Judge did, pursuant to the aforesaid Act of Parliament, sanction and approve of such settlement, and did order that the said infant should be at liberty in contemplation of her marriage with the said Lord B. to execute the said indentures accordingly, and that upon the due execution of the said indenture of even date herewith and of this indenture by the said Lord B., and C. D., they should be at liberty to intermarry (a):

SETTLEMENTS.
XXXIII.
—
INFANT'S
SETTLEMENT.
—

And whereas these presents have been approved by the said Judge, as appears by the signature of the chief clerk in the margin hereof:

Settlement
approved by
the Judge.

NOW THIS INDENTURE WITNESSETH that in obedience to the aforesaid Order of the Chancery Division of the High Court of Justice, and in consideration of the said intended marriage, the said C. D. (b), with the privity of the said Lord B., hereby assigns unto the trustees:

First testatum.
Assignment by
wife

First, All that the moiety to which the said C. D. is now, or will upon the solemnization of the said marriage become entitled as aforesaid in the said sum of £ , raisable for portions under the trusts of the aforesaid term of five hundred years in the said estates at &c., devised by the will of the said E. D.:

of her share
in portion.

(a) The liberty to marry is only necessary where the infant, as in this case, is a ward of Court. Where the application is only under the Act for the purpose of making a settlement binding on the infant, the words "and that upon due execution" &c., may be omitted.

Liberty to
marry neces-
sary only in
case of ward

(b) The Court can, under the Infants' Settlement Act, enable the infant to assign, but, it is conceived, cannot enable her to give a mere personal covenant, therefore she is not made to assign AS SETTLOR. As to the husband's concurrence see note (a) to Preced. XXXI., p. 318.

SETTLEMENTS.
XXXIII.

INFANT'S
SETTLEMENT.

and in estate
of testator ;

and all arrears
of income due
so as to be
capitalised.

Habendum.

Upon trust for
wife until the
marriage.

Second
testatum.
Trusts after
marriage,

For investment
and varying
investments,

Secondly, All that the moiety to which the said C. D. is now or will upon the solemnization of the said marriage become entitled as aforesaid of the net residue of the money to arise from the sale and conversion of the freehold, copyhold, and leasehold estates of the said testator at &c., and of the testator's residuary personal estate (if any) :

And also all arrears and accumulations of income which on the day of the solemnization of the said marriage shall be due to the said C. D. in respect of the said shares and premises hereby assigned, and so that such arrears and accumulations of income shall, as from the day of the said marriage, merge in and be added to and considered as part of the capital of the said shares and premises hereby assigned,

TO HAVE AND RECEIVE the premises unto the trustees Upon trust for the said C. D. until the said intended marriage, and after the solemnization thereof upon the trusts hereinafter declared concerning the same.

AND THIS INDENTURE ALSO WITNESSETH that in obedience to the said order, and in consideration of the said intended marriage, the said C. D. hereby directs (a), and the trustees hereby declare and do agree with the other parties hereto, That the trustees shall after the said intended marriage stand possessed of the said shares, arrears and accumulations of income, and premises hereinbefore assigned to them Upon the trusts following, (that is to say),

Upon trust that the trustees or the survivors or survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the time being of these presents, hereinafter called the trustees or trustee, shall either permit the said shares, arrears of income, and premises hereinbefore assigned, or any part thereof, to remain in their present investments or condition, or

(a) This being a settlement of the wife's property only, in which under the M. W. P. A. the husband would take no interest, he does not concur in directing.

shall as soon as convenient obtain payment or transfer of the moneys or investments representing the premises or any of them, or any part or parts thereof, when and as the same shall respectively become payable or transferable, and as regards investments of which transfer shall be so obtained, shall either retain the same or shall, with the consent of the said Lord B. and C. D. during their joint lives, or of the survivor of them during his or her life, and so that the consent of the said C. D. may be effectual notwithstanding her infancy (a), and after the death of the survivor at the discretion of the trustees or trustee, sell, call in, or convert into money the same or any of them, and shall with the like consent or at the like discretion invest the money arising thereby, and also any money received in respect of the premises, in the names or name of the trustees or trustee in manner following, and not otherwise,

In [*Investment Clause, Form, No. 18.*]

AND IT IS HEREBY AGREED that the trustees or trustee shall stand possessed of the premises hereinbefore assigned, or the investments representing the same, hereinafter called the trust fund, and of the annual income thereof, Upon the trusts following, (that is to say,)

[*Trust for wife for life, and then for husband for life, Form, No. 21.*]

Trusts to pay income to wife for her life, and then to husband for his life.

And after the death of the survivor of the said C. D. and Lord B., IT IS HEREBY AGREED that the capital and income of the trust fund shall be held In trust for [*issue of marriage, as husband and wife or survivor shall appoint, from Form No. 24, first clause.*]

And in default of and until and subject to any such appointment In trust for all or any of the children of the said intended marriage (except an eldest or only son, and except any other son who before attaining the age of twenty-one years shall succeed to the title of Baron B.), who being sons or a son attain the age of twenty-one

Then for issue of marriage as husband and wife or survivor shall appoint. In default of appointment to all children of marriage, except son, succeeding to title. If he is only child then for him.

(a) As to the power of an infant to consent, see *Re D'Angiban, Andrews v. Andrews*, 15 Ch. D. 228.

SETTLEMENTS.
XXXIII.
INFANT'S
SETTLEMENT.

Trust in
default of
children for
wife.

Direction to
raise money
for the outfit
of wife, and
costs.

years, or being daughters or a daughter attain that age or marry under it, and if more than one in equal shares; and if there should be no child who attains a vested interest under the aforesaid trust in default of appointment, then in trust absolutely for the first or only son (if any) of the said intended marriage who attains the age of twenty-one years and also succeeds to the title of Baron B.

[*Hotchpot clause, from Form No. 24.*

Advancement clause, Form No. 26.]

AND IT IS HEREBY AGREED that if there should be no child of the said intended marriage who attains a vested interest under the trusts in default of appointment hereinbefore contained, then subject to the trusts and powers herein contained, the trust fund, and the income and statutory accumulations (if any) of the income thereof, or so much thereof respectively as shall not have become vested or been applied under any trust or power herein contained or under any statutory power, shall after the death of the said Lord B., and such failure of children as aforesaid, be held in trust [*trusts of the wife's trust fund, Form No. 30, but say, the trust fund, instead of the wife's trust fund*].

PROVIDED always, and it is hereby agreed, that the trustees or trustee shall after the solemnization of the said marriage, out of the trust funds coming to their hands under these presents, raise the following sums and apply or pay the same as hereinafter mentioned, (that is to say)

First, the trustees or trustee shall and they or he are hereby required to raise a sum of £ and to pay the same to the aforesaid guardians of the said C. D. or the survivor of them, to be by them or him applied in discharging the cost of the outfit of the said C. D. preparatory to her marriage, and all liabilities connected therewith, and the surplus (if any) of the said sum of £ , after answering the purposes aforesaid, shall be paid by the said guardians or guardian to the said C. D., but the receipt of the said guardians or guardian shall be a complete discharge to the trustees or trustee for the said sum of £ .

Secondly, the trustees or trustee shall and they or he are hereby required to raise such sum as they or he shall deem proper for the purpose of discharging the costs and expenses of all parties of and incidental to the preparation, execution, and completion of these presents, and the hereinbefore mentioned indenture of even date herewith, and of and incidental to all proceedings in the said action *Re D., D. v. M.* with reference thereto or to the said marriage, and the statement in writing of the trustees or trustee as to the amount of all such costs and expenses shall be conclusive that the amount mentioned in such statement is the proper amount, and shall be binding on all persons claiming under these presents, And the amount so to be raised as aforesaid shall be applied by the trustees or trustee in discharge of the costs and expenses aforesaid.

[*Add power for wife to make a settlement on future marriage, Form No. 33; Agreement to settle other property of wife, Form No. 35, and other powers and provisions required, from Preced. XXXI. ante, concluding with power to husband and wife and survivor to appoint new trustees, Form No. 46*].

In witness &c.

The Infants' Settlement Act (18 & 19 Vict. c. 43) enables a female infant with the sanction of the Court, if she has attained seven-teen years of age, to settle or contract to settle, her own property and property over which she has any power of appointment at the date of the settlement, whether in possession, reversion, remainder, or expectancy, except where the power is expressly declared not to be exercisable during infancy, or where the infant being tenant in tail dies under twenty-one. But there is no power in the Act to bind any future property, that is, property to which she is not entitled in reversion, remainder, or expectancy at the date of the contract, but which may devolve on her during the coverture, and since the *M. W. P. A.*, 1882, this cannot be bound by the husband's covenant.

It is however conceived that the infant would on attaining twenty-one be bound to elect whether her covenant to settle shall bind future property or not, inasmuch as the principle of *Willoughby v. Middleton* 2 J. & H. 344, and *Re Vardon's Trusts*, 28 Ch. D. 124, is extended by the *M. W. P. A.*, s. 2, to the future property of the wife, so that in electing to confirm the covenant she binds her future property, not-

SETTLEMENTS.
XXXIII.

INFANT'S
SETTLEMENT.

Statement in
writing as to
amount to be
conclusive.

Effect of agree-
ment by infant
to settle other
property.

Election after
attaining
twenty-one.

SETTLEMENTS.
XXXIII.INFANT'S
SETTLEMENT.Post-nuptial
settlement
by infant.Husband not
excluded from
taking under
testamentary
power given
to wife in
default of
issue.

withstanding that she is restrained from anticipation. (But see *Smith v. Lucas*, 18 Ch. D. 531, and *Re Wheatley, Smith v. Spence*, 27 Ch. D. 606, as to the doctrine of election applying where there is a restraint upon anticipation).

If the infant's agreement to settle other property is not made with the sanction of the Court, she would be bound to elect as to all the property, present and future, included in the agreement.

The Infants' Settlement Act enables the Court to sanction a post-nuptial settlement: *Powell v. Oakley*, 34 Beav. 575; *Re Wood, Brooking v. Brooking*, Solor. J., 1883, p. 584; *Re Sampson and Wall*, 25 Ch. D. 482.

The Court will not sanction a provision prohibiting the wife from exercising a testamentary power vested in her in default of issue of the marriage, in favour of her husband, although he married a ward in defiance of an order of the Court: *Re Sampson and Wall, ubi supra*.

XXXIV.

POLICY ON
HUSBAND'S
LIFE.Assignment of
policy on
husband's life.

ANTE-NUPTIAL SETTLEMENT OF POLICY ON HUSBAND'S LIFE. (*Witnessing part*.) VARIATION where husband DEMISES his LIFE INTEREST in settled lands to SECURE PAYMENT of the PREMIUMS.

[*Prior witnessing parts of settlement by husband of the husband's trust fund, and by wife of the wife's trust fund, as in Preced. XXXI.; or witnessing part of settlement by wife of the trust fund, her settled fund being the only fund settled and so called, as in Preced. XXXIII.*]

AND THIS INDENTURE ALSO WITNESSETH that in consideration of the said intended marriage the said [*husband*] AS SETTLOR hereby assigns unto the trustees

ALL THAT POLICY of assurance effected in his own name and on his own life for the sum of £ with the Insurance Company, dated the day of , numbered , and at the annual premium of £ , and the said sum of £ and all other money to become payable thereunder:

TO HOLD to the trustees Upon trust that the trustees or trustee (a) shall as soon as may be after the death

(a) These words are used on the assumption that the expression "trustees or trustee" has been previously defined as in Preced. XXXI. p. 319.

of the said [*husband*] get in and receive the money to become payable thereunder, and stand possessed of the net residue thereof after discharging all costs and expenses of recovering and receiving the same, UPON THE TRUSTS, and subject to the powers and provisions hereinbefore declared concerning money forming part of the husband's trust fund [*or if there is no such fund settled, say, the trust fund*] in favour of the said [*wife*] and the issue of the said intended marriage, but with this variation (a), That if there should be no child of the said intended marriage who attains a vested interest under the trusts hereinbefore contained in default of any appointment by the said [*husband*] and [*wife*], or the survivor of them, then subject to the trusts and powers herein contained, the said policy or the money received thereunder and the investments representing such money and the income and statutory accumulations (if any) of the income thereof, or so much thereof respectively as shall not have become vested or been applied under any trust or power hereinbefore contained or under any statutory power, shall be held in trust for the said [*husband*] absolutely (b).

SETTLEMENTS.
XXXIV.
POLICY.
—

[Add covenant by husband to keep up policy, Form No. 34; power to apportion mixed funds and other forms as required as in Preced. XXXI.]

In witness, &c.

Notice in writing of this assignment should be given to the Insurance Company, see note to Preced. XIX.

(a) This variation applies only if there is no husband's trust fund settled.

(b) Where the husband demises his life interest in settled lands to secure the payment of the premiums on the policy, add to the recitals in the earlier part of the deed the following:—

And whereas under the will of _____ deceased,
dated &c. and proved in the Principal Probate Registry
on &c. the said [*husband*] is entitled in possession for his
life without impeachment of waste to the lands and
hereditaments hereinafter demised, And it has been

Recital of
husband's life
interest.

SETTLEMENTS. agreed that he should make such demise thereof as
XXXIV. hereinafter appearing :

POLICY.

And the witnessing part immediately following the above assignment should be as follows :—

Further
testatum.
Demise of life
interest.

AND THIS INDENTURE ALSO WITNESSETH that in pursuance of the said agreement in this behalf and in consideration of the said intended marriage the said [husband] AS SETTLOR hereby grants and demises unto the trustees hereinbefore named All &c. To HOLD unto the trustees for the term of 99 years from the day next before the date of these presents if the said [husband] shall so long live without impeachment of waste, Upon trust for the said [husband] until the solemnization of the said marriage, And after the solemnization thereof Upon trust out of the rents and profits of the said demised premises to raise and pay any money which may become payable by the said [husband] under his covenant hereafter contained with reference to the said policy hereinbefore assigned or any policy or policies to be substituted in lieu thereof, And also to raise and pay any other money hereinafter authorized to be raised and paid out of such rents and profits for purposes connected with any such policy [*i.e. under Form No. 34, with the addition of the words in the next note*], And it is hereby agreed that subject to the trusts aforesaid the trustees or trustee shall pay the rents and profits of the said premises hereby demised or so much thereof as shall not from time to time be required to answer the trusts aforesaid unto or permit the same to be received by the said [husband].

Where a life interest is demised, the following words should be added to the power of the trustees to keep up or restore the policy or effect a new policy in the second clause of Form No. 34 after the word "discretion,"

raise and pay out of the rents and profits of the hereditaments hereinbefore demised, or if such rents and profits be insufficient, then [*continue as in Form No. 34*].

TRANSFER of a MORTGAGE in contemplation of the marriage of the mortgagee.

SETTLEMENTS.
XXXV.

THIS INDENTURE [*indorsed (a) on a mortgage dated &c., 1880, to secure to the intended wife, then F. B., £3000 and interest*] made the &c., between the within named F. B. [*wife*] of the first part, D. D. of &c. [*husband*] of the second part, and Sir F. B. of &c., Baronet, Arthur D. of &c., and H. D. B. of &c., which three last named persons are hereinafter called the trustees, of the third part:

TRANSFER OF
MORTGAGE.

Parties.

Whereas a marriage has been agreed on and is intended to be solemnized between the said F. B. and D. D.:

Recitals.
Intended
marriage.

And whereas the within mentioned sum of £3000 with the current half-year's interest thereon, is owing to the said F. B. on the security of the within written indenture:

That mortgage
debt still due
with interest.

And whereas upon the treaty for the said marriage it was agreed that the said sum of £3000 and the interest thereon, and the securities for the same, should be transferred to the trustees upon the trusts and under and subject to the powers and provisions hereinafter contained or referred to.

Agreement for
transfer.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the said intended marriage, the said F. B., AS MORTGAGEE, with the approbation of the said D. D., hereby assigns

First
testatum.

ALL that the principal sum of £3000 so owing to the said F. B. on the security of the within written indenture, and all interest due and to become due thereon, and the benefit of, and the right to exercise and enforce, all powers and securities for compelling payment of the same:

Assignment of
debt.

To HOLD unto the trustees IN TRUST for the said F. B.

Habendum.

(a) Transfers of mortgages to trustees, as in the case in the text, or on the appointment of new, or the retirement and discharge of old, trustees, may be made by indorsement where circumstances admit, since no money passes, but if a transfer has to be sent to different places for execution it is safer to effect it by supplemental deed than risk the loss of the mortgage deed.

SETTLEMENTS.
XXXV.

TRANSFER OF
MORTGAGE.

Second
testatum.
Conveyance.

Habendum.

Power to
appoint new
trustees.

When transfers
may be by
supplemental,
or indorsed
deed.

until the said intended marriage, and after the solemnization thereof UPON THE TRUSTS and under and subject to the powers and provisions declared concerning the same by an indenture intended to bear even date herewith and to be made between &c. [*the marriage settlement.*]

AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement, and for the consideration aforesaid, the said F. B. AS MORTGAGEE, with the approbation of the said D. D., hereby conveys unto the trustees

ALL the messuages, lands, and hereditaments comprised in and conveyed by the within written indenture,

To HOLD unto and to the use of the trustees in fee simple, subject to the right of redemption subsisting under the within written indenture on payment of the said sum of £3000 and the interest thereon :

AND IT IS HEREBY DECLARED that the power of appointing new trustees of these presents shall be exercisable by the said D. D. and F. B. during their joint lives, and by the survivor of them during his or her life.

In witness, &c.

This transfer is an independent trust deed, and contains a separate power to appoint new trustees, so that the settlement is not brought on the title to the estate. The money, being settled upon trusts, is necessarily held by the trustees on a joint account. If the transfer were after the settlement, to secure settlement money, it should be a transfer to the transferees on a joint account, without disclosing the trusts.

This being a mere transfer of mortgage no covenant is required except by the wife as mortgagee.

SECT. VI.

APPOINTMENT, RETIREMENT, AND DISCHARGE OF
TRUSTEES.NEW
TRUSTEES.
XXXVI.NEW TRUSTEES
OF SETTLE-
MENT.

APPOINTMENT by Supplemental Deed of NEW TRUSTEES
of the Settlement, *Preced. XXXI.* under C. A. s. 31;
and DECLARATION VESTING the RIGHT TO RECOVER
part of the trust property under C. A. s. 34 (1).

THIS INDENTURE made &c., between A. D. of &c., and Parties.
B. D. his wife [*donees of the power*] of the first part, M.
of &c., and N. of &c. [*the new trustees*] of the second
part, and Y. of &c., Z. of &c. [*the continuing trustees*],
and the said M. and N. of the third part, and supple-
mental to an indenture dated &c., and made between &c.
hereinafter called the principal indenture (being a settle-
ment made previously to the marriage then intended and
since solemnized between the said A. D. and B. D.)
[*Preced. XXXI.*] and of which principal indenture W.
and X., and the said Y. and Z. are the trustees :

Whereas the sum of £ , being money repre- Recitals.
senting part of the husband's fund settled by the Of purchase of
principal indenture, has been sold and has been invested a residence :
under a power for that purpose therein contained, in the
purchase and in defraying the costs of the purchase of a
messuage and hereditaments situated at &c., and which
by an indenture dated &c. [*Conveyance of residence,*
Preced. XXXII.] were conveyed to the trustees of the
principal indenture upon trust for sale, and for dispo-
sition of the net proceeds of sale in accordance with the
terms of that indenture :

And whereas the investments representing the residue What the
of the husband's trust fund now consist of the mortgage residue con-
debt of £ and other investments mentioned in the sists of :
schedule hereto standing in the joint names of the same
trustees :

And whereas no part of the wife's trust fund settled by Wife's trust
the principal indenture has yet fallen into possession : fund not in
possession :

NEW
TRUSTEES.
XXXVI.

W. resident
abroad:

X. a lunatic:

Intention to
appoint new
trustees and
transfer mort-
gage and other
investments:

And whereas the said W. has been resident out of the United Kingdom for more than twelve calendar months (a):

And whereas the said X. is now a person of unsound mind, duly found so by inquisition:

And whereas the said A. D. and B. D. are desirous of appointing the said M. and N. to be trustees of the principal indenture in the place of the said W. and X.:

And whereas it is intended that by an indenture intended to bear even date with but to be executed after these presents and to be made between the said Y. and Z. of the one part, and the said Y. Z. M. and N. of the other part, the said mortgage debt and the interest due and to become due thereon and the securities for the same shall be transferred to the said Y. Z. M. and N. (b):

And whereas it is intended that as soon as may be after the execution of these presents the other investments mentioned in the schedule hereto shall be transferred (b) into the joint names of the said Y., Z., M., and N., as trustees of the principal indenture:

Intention to
appoint new
trustees
of residence
purchased.

And whereas it is also intended that by an indenture bearing even date herewith and made between the same parties and in the same order and supplemental to the said indenture of &c. [*Conveyance of residence, Preced. XXXII.*], the said M. and N. shall under a power for the purpose contained in the same indenture be appointed trustees thereof in the place of the said W. and X., and that the said indenture of even date shall contain the proper declaration for vesting in the said Y., Z., M. and N. the messuage and hereditaments comprised in the said indenture to which it is to be supplemental:

First
testatum.
Appointment
of new
trustees.

NOW THIS INDENTURE WITNESSETH that the said A. D. and B. D. in exercise of the power for this purpose given to them by the principal indenture and of every other power enabling them, hereby appoint the

(a) Evidence of this fact should be obtained and preserved.

(b) As to the necessity for these transfers see C. A. s. 34 (3).

said M. and N. to be trustees of the principal indenture in the place of the said W. and X., and jointly with the said Y. and Z. for all the purposes of the principal indenture.

NEW
TRUSTEES.
XXXVI.

AND THIS INDENTURE ALSO WITNESSETH that the said A. D. and B. D., with the assent of the said Y. and Z. hereby declare that all chattels and also the right to recover and receive all debts and other things in action subject to the trusts of the principal indenture, shall forthwith vest in the said Y., Z., M. and N. as trustees of the principal indenture and as joint tenants for the purposes and upon the trusts thereof. In witness, &c.

Second
testatum.
Declaration
vesting
right to
chattels, &c.

THE SCHEDULE ABOVE REFERRED TO.

List of investments representing the husband's trust fund other than the messuage and lands purchased.

It is unnecessary now to add a declaration of trust of the stocks and shares to be transferred. The only object of that trust formerly was to make a debt by breach of trust a specialty debt. Now by statute 32 & 33 Vict. c. 46, specialty debts have no priority.

No declaration
of trust
necessary.

The effect of the declaration as to vesting is to make it unnecessary to send the deed abroad for execution by W., or to apply in the lunacy of X. for a vesting order, but the transfer of copyholds or mortgages or stocks or shares must be obtained as before the C. A., see s. 34 (3).

Execution by
W. or appli-
cation in
lunacy un-
necessary.

The assent of the continuing trustees to the declaration on the appointment of new trustees is not required by the Act, but it is desirable to shew by the deed that they do assent.

Assent of
continuing
trustees not
necessary.

APPOINTMENT by Supplemental Deed of NEW TRUSTEES. XXXVII.

of the RESIDENCE purchased by Settlement Trustees [Preced. XXXII.]; and DECLARATION VESTING it under C. A. s. 34 (1).

NEW TRUSTEES
OF RESIDENCE.

THIS INDENTURE made &c., between &c. [*the same date and parties as last Precedent*], and supplemental to an indenture hereinafter called the principal indenture, dated &c. and made &c., whereby a messuage and hereditaments situated at &c. were conveyed to the said W., X., Y., and Z. as trustees upon trust for sale [*Precedent XXXII.*]

Parties.

NEW
TRUSTEES.
XXXVII.

Recitals.
W. resident
abroad,
X. a lunatic.

First
testatum.
Appointment
of new
trustees.

Second
testatum.
Declaration as
to vesting.

Execution by
X. or appli-
cation in
lunacy un-
necessary.
Registration.

Whereas the said W. has been resident out of the United Kingdom for more than twelve calendar months :

And whereas the said X. is now a person of unsound mind, duly found so by inquisition :

And whereas the said A. D. and B. D. are desirous of appointing the said M. and N. to be trustees of the principal indenture in place of the said W. and X.

NOW THIS INDENTURE WITNESSETH that the said A. D. and B. D., in exercise of the power for this purpose given to them by the principal indenture and of every other power enabling them, hereby appoint the said M. and N. to be trustees of the principal indenture in the place of the said W. and X. and jointly with the said Y. and Z. for all the purposes of the principal indenture.

AND THIS INDENTURE ALSO WITNESSETH that the said A. D. and B. D., with the assent of the said Y. and Z., hereby declare that all the estate and interest of the said W., X., Y., and Z. and each of them, in the messuage and hereditaments now subject to the trusts of the principal indenture shall forthwith vest in the said Y., Z., M., and N. as trustees of the principal indenture and as joint tenants in fee simple [*or as the case may be*] for the purposes and upon the trusts thereof. In witness &c.

The effect of this declaration is to make it unnecessary to send abroad the conveyance for execution by W., or to apply in the lunacy of X. for a vesting order.

If the property is within any registry district the deed must be registered there: C. A. s. 34 (4).

As to the assent of the continuing trustees, see note at end of last precedent.

XXXVIII. APPOINTMENT OF A NEW TRUSTEE of the MORTGAGE DEBT settled by Precedent XXXV., and TRANSFER of the MORTGAGE, the trusts being disclosed.

NEW TRUSTEE
OF A MORT-
GAGE DEBT
AND TRANSFER
OF MORTGAGE.
Parties.

THIS INDENTURE made &c. between D. D. of &c. and F. D. his wife [*donees of power*] of the first part, H. D. B.

of &c. [*retiring trustee*] of the second part, X. of &c. [*new trustee*] of the third part, and Sir F. B. of &c. Bart. A. D. of &c. [*continuing trustees*], and the said X. of the fourth part :

NEW
TRUSTEES.
XXXVIII.

Whereas this indenture is supplemental to an indenture of transfer of mortgage hereinafter called the principal indenture dated &c., and made between the said F. D., then F. B., of the first part &c. [*the settlement of the mortgage debt of £3000, Preced. XXXV.*], for securing the payment to the parties thereto of the third part the principal sum of £3000 and interest, belonging to them on a joint account and indorsed on an indenture of mortgage dated &c. 1880, and made between &c. :

Recitals
that the deed
is supplemental
to transfer of
mortgage.

And whereas the said sum of £3000 secured by the principal indenture, with the current interest thereon, is still due to the said Sir F. B., A. D. and H. D. B. upon the security of the principal indenture :

That principal
sum and
interest still
due.

And whereas the said H. D. B. is desirous of being discharged from the trusts of the principal indenture, and the said D. D. and F. D. are desirous of appointing the said X. in his place as trustee thereof :

Desire of
trustee to be
discharged.

NOW THIS INDENTURE WITNESSETH [*appointment by D. D. and F. D. of X. in the place of H. B. D. adapting the last Precedent*] :

First
testatum.
Appointment
of new trustee.

AND THIS INDENTURE ALSO WITNESSETH that the said Sir F. B., A. D., and H. D. B. AS TRUSTEES hereby assign unto Sir F. B., A. D. and X. (a)

Second
testatum.
Assignment of
mortgage debt.

All that the principal sum of £3000 now owing on the security of the principal indenture, and all interest due and to become due thereon, and the full benefit of and the right to exercise and enforce all powers and securities for compelling payment of the said sum and interest :

TO HAVE AND RECEIVE the same unto the said Sir F. B., A. D., and X. Habendum.

Upon the trusts by the principal indenture declared or referred to concerning the same ;

(a) This assignment is made under 22 & 23 Vict. c. 35, s. 21. See also C. A. s. 50.

NEW
TRUSTEES.
XXXVIII.

Third
testatum.
Conveyance.

Habendum.

AND THIS INDENTURE ALSO WITNESSETH that the said Sir F. B., A. D., and H. D. B., AS TRUSTEES, hereby convey unto the said Sir F. B., A. D., and X. (a)

All the hereditaments comprised in and conveyed by the said indenture of mortgage of &c. 1880, and the principal indenture:

TO HOLD unto and to the use of the said Sir F. B., A. D., and X. in fee simple Subject to the right of redemption subsisting therein on payment of the said sum of £3000, and the interest thereon. In witness &c.

The transfers of mortgages in this and the next precedent are necessary because a vesting declaration under C. A. s. 34 does not apply to mortgages: see subs. 3.

As to the advantage of making a transfer to a new trustee by supplemental deed see note (a) to Preced. XXXV.

NEW
TRUSTEES.
XXXIX.

TRANSFER OF
MORTGAGE.
Parties.

TRANSFER OF A MORTGAGE on the appointment of a new trustee, the trust not being disclosed, and the original number of trustees not being kept up.

THIS INDENTURE made &c., between H. B. of &c., M. D. of &c., and D. B. of &c., hereinafter called the mortgagees, of the one part, and X. of &c., and Y. of &c., hereinafter called the transferees, of the other part, supplemental to an indenture of mortgage, hereinafter called the principal indenture, dated &c., and made &c., for securing to the mortgagees the sum of £5000 and interest on property situated at &c.

Recital that
money still
due on the
mortgage
and belongs
to the trans-
ferees.

Whereas the said sum of £5000 is still due on the security of the principal indenture with the current half-year's interest thereon, which sum and the interest now belong to the transferees on a joint account (b).

(a) This conveyance is made under C. A. s. 50. In reference to this and the last note, see the second note to that section, *ante*.

(b) This recital enables the trusts to be kept off the title: *Re Harman, &c., Railway Co.*, 24 Ch. D. 720.

NOW THIS INDENTURE WITNESSETH that in consideration of the premises the mortgagees, AS MORTGAGEES, hereby assign unto the transferees :

NEW
TRUSTEES.
XXXIX.

All that the sum of £5000 now owing on the principal indenture, and all interest due and to become due thereon, and the full benefit of and the right to exercise and enforce all powers and securities for compelling payment of the said sum and interest ;

First
testatum.
Assignment of
debt.

To HAVE AND RECEIVE the same unto the tranferees absolutely on a joint account. Habendum.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the mortgagees, AS MORTGAGEES, hereby convey unto the transferees : Second
testatum.
Conveyance.

All the hereditaments comprised in and conveyed by the principal indenture,

To HOLD unto and to the use of the transferees in fee simple, Subject to the right of redemption subsisting therein on payment of the said sum of £5000 and the interest thereon. In witness &c.

See the notes at the end of last Precedent, and see C. A. s. 31 (3).

APPOINTMENT of SEPARATE TRUSTEES under a will under XXXIXA.
C. A., 1882, s. 5.

SEPARATE
TRUSTEES.

THIS INDENTURE made &c. between M. of &c. [*surviving trustee*] of the first part, L. of &c. [*new trustee*] of the second part and X. of &c. and Y. of &c. [*new and separate trustees*] of the third part : Parties.
Recitals.

Whereas T. T. late of &c., by his will dated &c., Will.
appointed the said M. and N. since deceased executors and trustees thereof, and devised and bequeathed his real estate and the residue of his personal estate to the said M. and N. Upon trust to sell the said real estate (including chattels real), and call in, sell, and convert into money such part of his personal estate as should not consist of money ; And out of the money to arise thereby and out

NEW AND
SEPARATE
TRUSTEES.
XXXIXA.

of his ready money to pay his funeral and testamentary expenses and debts and legacies and to invest the residue of the said money as therein mentioned, With power to vary securities and to pay the annual income thereof to his wife S. T. (since deceased) during her life, And after her death the capital of one moiety was directed to be held Upon trust to pay the annual income thereof to his daughter Jane D. the wife of &c. during her life without power of anticipation during any coverture, And after her death Upon trusts for the benefit of the issue of the said Jane D., And the capital of the other moiety was directed to be held Upon trust to pay the annual income thereof to his daughter Mary E. the wife of &c. during her life, without power of anticipation during any coverture, And after her death Upon trusts for the benefit of the issue of the said Mary E. :

Death of
testator and
probate.

And whereas the said testator died on &c., without having revoked or altered his said will, which was on &c. proved by the said executors in the Principal Probate Registry :

Investment of
residuary
estate.

And whereas the said M. and N. have sold all the real estate of the said testator, and have converted so much of his personal estate as did not consist of ready money, and have paid his funeral and testamentary expenses and debts and legacies, and have invested the residue of the said money in the purchase of the Preference and Debenture Stocks mentioned in the Schedule hereto :

Death of tes-
tator's widow
and one trustee.

And whereas the said S. T. died on &c. and the said N. died on &c.

No power by
will to appoint
new trustee.

And whereas no person is nominated by the said will to appoint new trustees thereof after the death of the said S. T.

Intention to
appoint a new
trustee of will
and a separate
set of trustees
of one moiety
of the trust
fund.

And whereas the said M. as the surviving trustee of the said will is desirous of appointing the said L. a trustee thereof in the place of the said N. deceased, and also of appointing the said X. and Y. as separate trustees of the moiety of the said testator's residuary estate held

in trust for the said Jane D. and her issue as hereinbefore mentioned :

And whereas it is intended that as soon as conveniently may be the said M. shall sell so much of the Preference Stock in the Railway Company mentioned in the Schedule hereto as shall be sufficient to pay the costs of and incidental to the preparation and execution of these presents, and of the transfers hereinafter referred to or otherwise incurred in the execution of the trusts of the said will, And shall transfer (a) one moiety of the residue of the investments mentioned in the Schedule hereto into the names of the said X. and Y. to be held by them Upon the trusts affecting the one moiety of the residuary estate of the said testator held in trust for the said Jane D. and her issue, And transfer (a) the remaining moiety of the said residue of investments into the names of the said M. and L. Upon the trusts affecting the other moiety of the said residuary estate held in trust for the said Mary E. and her issue.

NOW THIS INDENTURE WITNESSETH that in exercise of the power for this purpose given to him by the Conveyancing and Law of Property Act, 1881, and of every other power enabling him, the said M. hereby appoints the said L. to be a trustee of the said will of the said T. T. in the place of the said N., and jointly with the said M. for all the purposes of the said will except as regards the moiety of the residuary estate of the said T. T. by his said will directed to be held in trust for the said Jane D. and her issue.

AND THIS INDENTURE ALSO WITNESSETH that the said M. in exercise of the power for this purpose given to him by the Conveyancing Act, 1882, and of every other power enabling him, hereby appoints the said X. and Y. to be trustees of the will of the said T. T. so far as regards the moiety of his residuary estate by his said will directed to be held in trust for the said Jane D. and her issue. In witness &c.

NEW AND
SEPARATE
TRUSTEES.
XXXIXA.

And to transfer
the moieties.

First testatum.
Appointment
of a new trustee
of will.

Second
testatum.
Appointment
of separate
trustees as to
one moiety.

(a) As to the necessity for these transfers, see C. A., s. 34 (3).

NEW AND
SEPARATE
TRUSTEES.
XXXIXA.

THE SCHEDULE ABOVE REFERRED TO.

[To contain a list of investments representing the residuary estate of T. T. deceased.]

As to the declaration of trust being unnecessary, see first note at the end of *Preced. XXXVI.*

RETIREMENT
AND
DISCHARGE OF
TRUSTEES.
XL.

RETIREMENT AND DISCHARGE of a Trustee under C. A. s. 32; and DECLARATION VESTING the RIGHT TO RECOVER part of the trust property in the continuing trustees alone under s. 34 (2); by deed supplemental to the Settlement, *Preced. XXXI.*, and to the appointment of new trustees thereof, *Preced. XXXVI.*

Parties.

THIS INDENTURE made &c. between A. D. of &c. and B. D. his wife [*donees of power*] of the first part, Y. of &c. [*retiring trustee*] of the second part, and Z. of &c. M. of &c., and N. of &c. [*continuing trustees*] of the third part, and supplemental to an indenture hereinafter called the principal indenture, dated &c., and made between &c., being a settlement made previously to the marriage then intended and since solemnised between the said A. D. and B. D. [*Preced. XXXI.*], and of which principal indenture the said W., X., Y., and Z. were trustees, and also supplemental to another indenture, itself supplemental to the principal indenture, and hereinafter called the supplemental indenture, dated &c., and made between &c., being an appointment of the said M. and N. as trustees of the principal indenture, in place of the said W. and X. [*Preced. XXXVI.*]

Recitals.

State of settled
property.

Whereas the husband's trust fund other than the mesuage and hereditaments purchased as mentioned in the supplemental indenture, and other than the sum of cash hereinafter mentioned, now consists of the investments mentioned in the first part of the schedule hereto, and the second part of the same schedule contains a debtor

and creditor account showing the sales and investments made and the receipts and payments of the trustees in respect of the capital of the said trust fund (a); and by such account it appears that there is now a balance of £ cash in the hands of the trustees, standing to their credit at the bank:

RETIREMENT
AND
DISCHARGE OF
TRUSTEES.
XL.

And whereas the wife's trust fund has not fallen into possession:

And whereas the said Y. is desirous of being discharged from the trusts of the principal indenture:

Desire of
trustee to be
discharged.

And whereas it is intended that immediately after the execution of these presents the investments mentioned in the first part of the schedule hereto, and the residue of the said cash balance after deducting the costs of and relating to the preparation and execution of these presents or otherwise incurred in the execution of the trusts of the principal indenture, shall be transferred into the joint names of the said Z., M., and N. alone (b):

Intention to
transfer
investments
and cash, and
to vest the
residence.

And whereas it is also intended that by an indenture bearing even date herewith, and made between the same parties and in the same order, and supplemental to the conveyance of the aforesaid messuage and hereditaments and to the indenture appointing the said M. and N. to be trustees thereof in place of the said W. and X., the said Y. shall be also discharged from being trustee of the said messuage and hereditaments, and that the same shall be vested in the said Z., M., and N. alone as joint tenants and trustees thereof [*next Preced.*]:

NOW THIS INDENTURE WITNESSETH that the said Y. by this deed declares that he is desirous of being discharged from the trusts of the principal indenture.

First
testatum.
Desire to be
discharged.

AND THIS INDENTURE FURTHER WITNESSETH that the said A. D., B. D., Z., M., and N. hereby consent to the discharge of the said Y. from the trusts aforesaid, And

Second
testatum.
Consent to the
discharge.

(a) This is a better mode of shewing the dealings than recitals.

(b) As to the necessity of these transfers, see C. A., s. 34 (3), and where a mortgage forms one of the investments, see recital of intended transfer thereof in Preced. XXXVI.

RETIREMENT
AND
DISCHARGE OF
TRUSTEES.

XI.

Third
testatum.
Declaration
vesting the
right to
recover
chattels and
choses in
action.

to the vesting in the said Z., M., and N. alone of the trust property.

AND THIS INDENTURE ALSO WITNESSETH that all the parties hereto do and each of them doth hereby declare That all chattels, and also the right of the said Y., Z., M., and N. to recover and receive all debts and things in action subject to the trusts of the principal indenture shall forthwith vest in the said Z., M., and N. alone as trustees of the principal indenture and as joint tenants for the purposes and upon the trusts thereof. In witness &c.

THE SCHEDULE ABOVE REFERRED TO.

Part 1.

Investments representing the part of the husband's trust fund not invested in the purchase of a residence, and not represented by the cash balance appearing by Part 2.

Part 2.

Debtor and creditor account.

XLI.

RETIREMENT AND DISCHARGE of a Trustee of the RESIDENCE purchased by Settlement Trustees, *Preced. XXXII*; and DECLARATION VESTING it in the continuing trustees alone.

Parties.

THIS INDENTURE made &c. [*same date and parties as the last Precedent.*]

Recitals that
deed is
supplemental.

Whereas these presents are supplemental to an indenture hereinafter called the principal indenture, dated &c., and made &c., whereby a messuage and hereditaments situated at &c., were conveyed to the said W., X., Y., and Z., as trustees upon trust for sale [*Preced. XXXII.*] And also supplemental to an indenture itself supplemental to the principal indenture, dated &c., and made &c., whereby the said M. and N.

were appointed new trustees of the principal indenture in place of the said W. and X. [*Preced. XXXVII.*]:

And whereas Y. is desirous of being discharged from the trusts of the principal indenture:

NOW THIS INDENTURE WITNESSETH that Y. by this deed declares that he is desirous of being discharged from the trusts of the principal indenture.

AND THIS INDENTURE FURTHER WITNESSETH that A. D., B. D., Z., M., and N. hereby consent to the discharge of Y. from the trusts aforesaid, and to the vesting in Z., M., and N. alone of the trust property:

AND THIS INDENTURE ALSO WITNESSETH that all the parties hereto do and each of them doth hereby declare that all the estate and interest of the said Y., Z., M., and N., and each of them in the messuage and hereditaments now subject to the trusts of the principal indenture shall forthwith vest in the said Z., M., and N. alone as trustees of the principal indenture and as joint tenants for the purposes and upon the trusts thereof. In witness &c.

RETIREMENT
AND
DISCHARGE OF
TRUSTEES.
XLI.

Desire of
trustee to be
discharged.
First
testatum.
Declaration of
desire to be
discharged.
Second
testatum.
Consent to the
discharge.
Third
testatum.
Declaration as
to vesting.

RETIREMENT and DISCHARGE of a Trustee of the FREEHOLDS and COPYHOLDS settled in trust for sale previous to Marriage, *Preced. XXX.*; And DECLARATION VESTING the FREEHOLDS and the RIGHT TO SUE on the COVENANT to surrender the COPYHOLDS in the continuing trustees alone.

XLII.

THIS INDENTURE made &c., between A. B. of &c., and C. B. his wife [*donees of power*] of the first part, X. of &c. [*retiring trustee*], of the second part, and W. of &c., M. of &c., and N. of &c. [*continuing trustees*] of the third part, supplemental to an indenture, hereinafter called the principal indenture, dated &c., whereby freehold hereditaments situated at &c., and copyhold hereditaments situated at &c., were conveyed and covenanted to be surrendered respectively to the said W., X., M., and N. as trustees upon trust for sale [*Preced. XXX.*]

Parties.

RETIREMENT
AND
DISCHARGE
OF TRUSTEES.
XLII.

Third
testatum.
Declaration as
to vesting and
right to sue
under covenant
to surrender.

[*Recite that Copyholds have not been surrendered and desire of X. to be discharged, and adapt 1st and 2nd witnessing parts of the last Precedent.*]

AND THIS INDENTURE ALSO WITNESSETH that all the parties hereto do and each of them doth hereby declare That all the freehold hereditaments comprised in the principal indenture shall forthwith vest in the said W., M., and N., alone in fee simple (a) as trustees of the principal indenture and as joint tenants,

AND that the right to sue on the covenant contained in the principal indenture to surrender the copyhold hereditaments now subject to the trusts of the principal indenture shall vest in the same three persons absolutely. In witness &c.

If X. desires to be discharged from the settlement of even date, Preced. XXXA., his discharge should be by a separate deed supplemental to that Precedent, which can readily be adapted from Preced. XL.

XLIII.

RELEASE OF
MORTGAGE.

Parties.

RELEASE TO CONTINUING TRUSTEES OF MORTGAGE settled by *Preced. XXXV.*, on the retirement and discharge of a trustee, the trust being disclosed.

THIS INDENTURE made &c., between D. D. of &c. and F. D. his wife [*donees of power*], of the first part, X. of &c. [*retiring trustee*] of the second part, and Sir F. B. of &c., Bart., and A. D. of &c. [*continuing trustees*] of the third part.

Recitals.
That the deed
is supple-
mental to a
transfer.

Whereas this indenture is supplemental to an indenture of transfer of mortgage hereinafter called the principal indenture dated &c., and made between the said F. D., then F. B., of the first part, the said D. D. of the second part, and the said Sir F. B., A. D., and H. D. B. of the third part, for securing the payment to the parties thereto of the third part of the principal sum of £3000

(a) The words of this declaration of vesting the freeholds differ from those used in preceding Precedents, and are given as another illustration of a declaration under s. 34 of the C. A.

and interest [*Preced. XXXV.*], and indorsed on an indenture of mortgage dated &c. 1880, and made between &c., and supplemental also to an indenture itself supplemental to the principal indenture, and hereinafter called the supplemental indenture, dated &c., and made &c., whereby the said X. was appointed a new trustee of the principal indenture in the place of the said H. D. B. [*Preced. XXXVIII.*]:

RETIREMENT
AND
DISCHARGE OF
TRUSTEES.
XLIII.
—
RELEASE OF
MORTGAGE.
—

And whereas the said sum of £3000, with the current half-year's interest thereon, is still due to the said Sir F. B., A. D., and X. upon the security of the principal indenture and the supplemental indenture:

That mortgage
debt due.

And whereas the said X. is desirous of being discharged from the trusts of the principal indenture:

First
testatum.
Desire to be
discharged.

NOW THIS INDENTURE WITNESSETH [*adapt first and second witnessing parts of Preced. XLI.*]

Second
testatum.
Consent to
discharge.
Third
testatum.
Assignment of
debt.

AND THIS INDENTURE ALSO WITNESSETH that for effectuating the said desire X., AS MORTGAGEE, hereby assigns and releases unto Sir F. B. and A. D.

All that the principal sum of £3000 now owing on the security of the principal indenture and the supplemental indenture, and all interest due and to become due thereon,

TO HAVE AND RECEIVE the same unto the said Sir F. B. and A. D. absolutely:

Habendum.

AND THIS INDENTURE ALSO WITNESSETH that for further effectuating the said desire the said X., AS MORTGAGEE, hereby conveys and releases unto the said Sir F. B. and A. D. all the hereditaments comprised in and conveyed by the said indenture of mortgage of &c., 1880, and the principal indenture and the supplemental indenture, and which are now vested in the said Sir F. B., A. D., and X., under the same indentures,

Fourth
testatum.
Conveyance.

TO HOLD unto and to the use of the said Sir F. B. and A. D. in fee simple, subject to the right of redemption subsisting therein, on payment of the said sum of £3000 and the interest thereon.

Habendum.

In witness &c.

This transfer is required by C. A. ss. 32 (2), 34 (3)

XLIV. RELEASE TO CONTINUING TRUSTEES OF MORTGAGE on the retirement and discharge of one trustee, the trust not being disclosed.

**RELEASE OF
MORTGAGE.**

Parties.

THIS INDENTURE made &c. between X. of &c. of the one part and R. P. of &c., and A. S. of &c. of the other part:

**Recitals.
That deed
supplemental
to mortgage
and transfer.**

WHEREAS these presents are supplemental to an indenture of mortgage hereinafter called the principal indenture, dated &c., and made between &c. for securing a sum of £5000 and interest on property situated at &c., and supplemental also to an indenture of transfer, itself supplemental to the principal indenture, and hereinafter called the supplemental indenture, dated &c., and made between, &c., whereby the said sum of £5000 and interest and the securities for the same were transferred to the said R. P., A. S., and X. [*Preced. XXXIX.*]

**That debt still
due.**

And whereas the said sum of £5000 with the current half year's interest thereon is still due on the security of the principal indenture and the supplemental indenture, and the same sum and the interest thereon now belong to the said R. P. and A. S. alone on a joint account(a).

**And now
belongs to
R. P. and A. S.
solely.**

**First,
testatum.
Assignment of
debt.**

NOW THIS INDENTURE WITNESSETH that in consideration of the premises the said X. as MORTGAGEE hereby assigns and releases unto the said R. P. and A. S.

All that the principal sum of £5000 owing on the securities of the principal indenture and the supplemental indenture, and all interest due and henceforth to become due thereon,

TO HAVE AND RECEIVE the same unto the said R. P. and A. S. absolutely on a joint account.

**Second
testatum.
Conveyance.**

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said X. AS MORTGAGEE hereby conveys and releases unto the said R. P. and A. S.

All the hereditaments comprised in and conveyed by the principal indenture and the supplemental indenture,

(a). See note (b) to *Preced. XXXIX.*

and which are now vested in the said R. P., A. S., and X. under the same indentures,

To HOLD unto and to the use of the said R. P. and A. S. in fee simple, subject to such right of redemption as is subsisting therein on payment of the said sum of £5000 and the interest thereon. In witness &c.

RETIREMENT
AND
DISCHARGE OF
TRUSTEES.
Habendum.

See note to last precedent.

SECT. VII.

WILLS.

WILLS.
XLV.
—

WILL of a Married Man bequeathing Furniture, &c., to Wife, charitable and other legacies, an annuity, and a sum to one for life, with remainder to his issue *per stirpes*; general devise and bequest of real and residuary personal estate upon trust for sale and conversion; for investment of proceeds and payment of income to wife during widowhood, with remainder to testator's issue as wife shall appoint, in default, to children equally; advancement and other clauses and settlement of daughters' shares, and giving them power to appoint life interests to surviving husbands and other provisions.

I &c. [Commencement of will, Form No. 47;

Appointment of executors and trustees, and legacy to each for acting, Form No. 49;

Appointment of guardians, Form No. 50;

Confirmation of testator's marriage settlement, Form No. 51;

Bequest to wife of furniture, &c., Form No. 52;

Legacies to charities, Form No. 53.

Legacies or annuities to servants, Form No. 54 or 55;

Legacies; option to pay to married woman or her trustees, Form No. 57;

Bequest of annuity, Form No. 56;

Bequest to A. for life, and then to his issue per stirpes, Form No. 58;

Direction that in default of issue of A., legacy shall fall into residue, Form No. 58a;

Direction that legacies and annuities be paid free of legacy duty, Form No. 60;

General devise and bequest of real and personal estate upon trust to sell, pay debts, legacies, &c., and invest the residue; power to lease, Forms Nos. 61, 61a, 61b, and 18;

Trusts of investments, to pay income to wife during her widowhood (or for her life without power of anticipation), Forms Nos. 62 and 63;

Trusts as to capital for issue as she shall appoint ; in default, for children equally, as to sons who attain twenty-one, and as to daughters who attain that age or marry ; with hotchpot clause, Forms Nos. 64, 64a ;

Advancement clause, Form No. 65 ;

Settlement of daughters' shares, with power for them to appoint life interests to surviving husbands, Forms Nos. 66, 67, and 70 ;

Power for daughters to appoint separate trustees, Form No. 70a ;

Power for trustees of will to deal with daughters' shares notwithstanding directions for settlement, Form No. 71 ;

Declaration that any sum paid or settled by testator on the marriage of daughters be taken into account, Form No. 72 ;

Add, if required, power to mortgage for payment of debts, &c., Form No. 73.]

SUBJECT to the trusts and powers hereinbefore contained and all statutory powers I direct that the trust fund and the income thereof, and all statutory accumulations of income (if any), or so much thereof respectively as shall not have become vested or been applied pursuant to this my will or any statutory power, shall be held in trust for absolutely.

[Power for trustees to value and apportion mixed funds, Form No. 74, and to employ agents, Form No. 75 ;

And, if required, professional trustee to be paid his costs, Form No. 76.]

I DECLARE that my wife during her life shall have power to appoint a new trustee or new trustees of my will. In witness whereof I have hereunto set my hand the day and year first above written.

[Attestation clause, Form No. 78.]

The statutory provisions incorporated in this precedent are the same as those incorporated in Precedents XXXA. and XXXI. (see the last note at the end of each of those Precedents, *ante*), except the implied covenants, and with the addition of s. 30, which renders unnecessary the devise of trust and mortgage estates.

WILLS.
XLV.

Ultimate gift
of residue.

Power to
appoint new
trustees.

Attestation
clause.

What statu-
tory provisions
incorporated
in this
precedent.

XLVI.
ENLARGEMENT
OF LONG
TERMS.

SECT. VIII.

ENLARGEMENT OF LONG TERMS.

ENLARGEMENT INTO A FEE of the **LONG TERM** assigned by Precedent XIV. by declaration of the **TENANT FOR LIFE** of settled estates.

Parties

THIS INDENTURE made the day of 18 , between H. D. of &c. [*tenant for life*], of the one part, and E. L. of &c., and L. P. of &c. [*trustees*], of the other part, supplemental to an indenture of conveyance dated &c., and made between &c., hereinafter called the principal deed [*Preced. XIV.*] (a).

Recited that
H. D. is
tenant for life;

Whereas the said H. D. is now tenant for life in possession under the will of E. G. D. deceased, recited in the principal deed, and beneficially entitled in right of the term of one thousand years created by the indenture of the 1st day of June, 1651, also recited in the principal deed, to the possession of the lands and hereditaments comprised in that term, and by the principal deed conveyed to the said E. L. and L. P. for the residue of that term as trustees and upon the trusts of the said will :

no tenant in
tail attained
twenty-one.

And whereas there has been no tenant in tail under the limitations of the said will who has attained the age of twenty-one years.

First
testatum.
Declaration.

NOW THIS INDENTURE WITNESSETH that the said H. D., as the person so beneficially entitled, hereby declares that from and after the execution of these presents the said term of one thousand years shall be and the same is hereby enlarged into a fee simple.

Second
testatum.
Settlement of
fee simple.

AND THIS INDENTURE ALSO WITNESSETH that for settling the said fee simple so acquired by enlargement in the manner in which the same is liable to be settled, the said E. L. and L. P., as such trustees as aforesaid, hereby convey unto the said H. D. all the lands and

(a) If the term is settled by settlement the deed enlarging it will be described as supplemental to the settlement.

hereditaments which by the principal deed were assigned to the said E. L. and L. P. for the residue of the said term of one thousand years, and which under the declaration hereinbefore contained have become vested in them for an estate in fee simple, To HOLD unto the said H. D. in fee simple, To THE USES, upon the trusts, and subject to the powers and provisions by the will and codicils of the said E. G. D. deceased declared and now subsisting concerning the hereditaments in England and Wales devised by the said will and the codicils thereto (a). In witness &c.

ENLARGEMENT
OF LONG
TERMS.
XLVI.

ENLARGEMENT OF A LONG TERM INTO A FEE BY EXECUTORS of deceased owner, as to PART of the demised property.

XLVII.

TO ALL TO WHOM THESE PRESENTS SHALL COME, X. of &c., and Y. of &c., send greeting :

WHEREAS these presents are supplemental to an indenture hereinafter called the principal indenture dated &c., and made between M. of the one part and A. B. (since deceased) of the other part, whereby All those &c. [*short description*] were assigned to the said A. B. for the residue of a term of 500 years created therein, and also in other land and hereditaments by an indenture of lease dated &c. and made &c., at a peppercorn rent payable in respect of all the demised premises :

Recitals.
That deed
supplemental
to assignment
to testator.

AND WHEREAS the said A. B. died on &c., 1881, being at his death entitled to the premises comprised in the

Death of
testator and
appointment of
executors.

(a) If a tenant in tail has attained twenty-one, the last witnessing part should be omitted. He may have made a mortgage or conveyance of the leaseholds which might ultimately entitle the mortgagee or some other person to a conveyance of the fee (see C. A. s. 65 (5)). Consequently the trustees should not in that case part with the fee, at least unless they are satisfied that the tenant in tail has not dealt with his equitable interest in the term.

Where a declaration enlarging a long term is contained in a conveyance or other instrument requiring a stamp, it must bear a further stamp of ten shillings in respect of the declaration.

Stamp.

ENLARGEMENT
OF LONG
TERMS.
XLVII.

principal indenture for the residue of the said term, and having by his will dated &c., 1880, appointed the said X. and Y. executors thereof who proved the same in the

District Probate Registry on &c., And the said term of 500 years is now vested in the said X. and Y. as the personal representatives of the said A. B. so far as regards the said premises comprised in the principal indenture [*add if so subject*], Subject to the incumbrances affecting the same :

Testatum.

NOW THESE PRESENTS WITNESS that the said X. and Y. as such personal representatives as aforesaid do and each of them doth hereby declare that from and after the execution hereof the said term of 500 years, as far as regards the land and hereditaments comprised in the principal indenture, shall be and the same is hereby enlarged into a fee simple. In witness, &c.

The executors take in that character under s. 65 (4) of the C. A. the like powers of selling and conveying the fee simple acquired by the deed in the text, as they had as executors of selling and assigning the term previous to its enlargement.

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